

# CALIFORNIA CRIMINAL JUSTICE REFORM: POTENTIAL LESSONS FOR THE NATION

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## HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

JULY 13, 2019

**Serial No. 116–35**

Printed for the use of the Committee on the Judiciary



Available <http://judiciary.house.gov> or [www.govinfo.gov](http://www.govinfo.gov)

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2019

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## **CALIFORNIA CRIMINAL JUSTICE REFORM: POTENTIAL LESSONS FOR THE NATION**

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**SATURDAY, JULY 13, 2019**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The subcommittee met, pursuant to call, at 9:47 a.m., in Fame Renaissance Center, 1968 West Adams Boulevard, Los Angeles, CA, Hon. Karen Bass [chair of the subcommittee] presiding.

Present: Representatives Bass, and Lieu.

Also present: Representatives Johnson of Georgia, Butterfield, Evans, and Horsford.

Staff Present: Ben Hernandez, Counsel; Joe Graupensperger, Chief Counsel; Rachel Rossi, Counsel; Veronica Eligan, Professional Staff Member.

Ms. BASS. Good morning, everyone. Good morning, everyone.

[Applause.]

Ms. BASS. We have to give a good L.A. welcome to members of the Judiciary Subcommittee, as well as members of the Congressional Black Caucus. So, good morning everyone.

[Applause.]

Ms. BASS. I am Congresswoman Karen Bass, and one of the many paths I have in Congress is I serve on the Judiciary Committee, and on Judiciary we have several subcommittees. So I chair the Subcommittee on Crime, Terrorism, and Homeland Security. So what we are going to do today is to have an official hearing. This is not a town hall meeting like we usually do in L.A., but this is an official hearing of the Subcommittee, and we are going to examine California's reforms.

So, without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

Our Subcommittee will come to order now, and I welcome everyone to today's hearing on California's criminal justice reform and potential lessons for the nation.

I will now recognize myself for an opening statement.

We are here today to discuss California's criminal justice reform efforts and to determine whether there are lessons the nation can learn.

It is first important to recognize how California's reforms came to be. California was long known for its tough-on-crime policies,

and it once led the nation in the rush for mass incarceration. Between 1975 and 2006, California's prison population increased eight-fold. From 1980 to 2006, California's jail population more than tripled. By the 2000s, California's prisons, which were designed to house a population of about 80,000, held over double their capacity.

Incarcerated people slept in gyms, hallways, and dayrooms. Mentally ill prisoners were jammed into tiny holding cells. Inmate suicide rates were 80 percent higher than in the rest of the nation's prisons. And this rapid incarceration devastated communities of color. Black persons represented 6 percent of the population but 27 percent of the incarcerated population.

It is important to note that, unfortunately, this data has not changed. At the end of 2016, 29 percent of male prisoners in state prisons were black, while only 6 percent of the state's male residents were black.

California, however, has made strides. After the 2011 Supreme Court case mandating the reduction of this unconstitutional incarceration, numerous ballot initiatives reflected the will of the people to scale back mass incarceration.

What has California done right? The witnesses in our first panel will describe ballot initiatives that have begun to drastically reduce the state's incarcerated population. These reforms have been narrowly targeted, but also have broadly applied to more types of offenses than simply low-level drug possession. The reforms include narrowing the Three Strikes law, the revision of felony murder laws, the reduction of penalties for drug and theft offenses, the expansion of parole and earned time credits for early release from prison, and the broad revisions of juvenile laws, and many more.

I know many of you in this room have been involved for the last three decades in making these reforms happen. So although many of them took place by ballot initiatives, it was the people in this room and others throughout our state who led a movement through many grassroots organizations that created the public will and identified the resources for the ballot initiatives to take place to begin with. And as a result, the state's incarceration levels have decreased drastically.

California's prison population—that is right, applaud for that.

[Applause.]

Ms. BASS. California's prison population had peaked at nearly 163,000 in 2006. By 2018, the California prison population stabilized at around 115,000, which is still far above capacity but leaves California with the 18th lowest incarceration rate in the country.

And remarkably, crime has not increased as a result of any of these reforms. Today I hope to explore these reforms—that deserves another applause.

[Applause.]

Ms. BASS. Today I hope to explore these reforms and whether similar comparable efforts will work at the Federal level.

We took a modest and remarkable step with the passage of the First Step Act last year, but California's experience can aid Federal legislators as we consider legislative efforts beyond those that focus

on low-level drug offenders and how to safely and creatively expand the type of offenses that must be reformed.

But take note: California is far from finished in its efforts. The prison incarceration rate in California is 4,180 per 100,000 residents for African American men, compared with 420. So that is 4,000 to 420 for white men. As in the case of other states and federally, we have not begun to sufficiently mitigate the clear racially disparate treatment within our criminal justice system, and reentry efforts must improve both in California and at the Federal level.

California has demonstrated that reentry efforts and the mitigation of collateral consequences must be a focus when considering criminal justice reform. Reform cannot only focus on reducing prison populations, it must also focus on ensuring the success of those coming home. The National Inventory of the Collateral Consequences of Conviction counted more than 44,000 separate collateral consequences to conviction. These include ineligibility for certain professional licenses and Federal housing assistance, and can limit many aspects of an individual's life, such as employment, education, and government benefits.

Lack of housing post-incarceration creates particularly dire challenges for women, especially those who are parents, and over 80 percent of women are parents, mothers who are incarcerated. Mothers may be required by child welfare agencies to locate adequate housing in order to gain custody of their children in foster care, and the witnesses on our second panel will describe this.

Today, this field hearing is an exciting opportunity for Congress to lead Washington, D.C. and to expand our understanding of criminal justice reform, and today I believe we will learn from California that we can reduce mass incarceration safely, but we must do so with the focus on more than numbers. We must focus on the people impacted and addressing their needs.

So from this hearing, we hope to develop legislation on reentry and looking for other ways to reduce the prison population.

Let me, before I introduce our witnesses, let me take a moment to introduce my colleagues that are here today. Two of my colleagues serve on the Judiciary Subcommittee on Crime.

Representative Ted Lieu from Los Angeles. We all know Ted Lieu.

[Applause.]

Ms. BASS. Representative Hank Johnson from the great state of Georgia.

[Applause.]

Ms. BASS. Representative G.K. Butterfield from North Carolina.

[Applause.]

Ms. BASS. I might add, G.K. is the former Chair of the Congressional Black Caucus.

Dwight Evans from the great state of Pennsylvania.

[Applause.]

Ms. BASS. And Representative Steven Horsford from Las Vegas, Nevada.

[Applause.]

Ms. BASS. So in addition to the hearing today—and this hearing is a collaboration between the Congressional Black Caucus and the

Crime Subcommittee. Members of the Congressional Black Caucus will be here all day. After this, we will be going to review our homeless situation, which we also know is one of the collateral consequences of mass incarceration as well.

Let me acknowledge Ira Reiner who is here, our former District Attorney.

Please stand, Mr. Reiner.

[Applause.]

Ms. BASS. And there are many, many, many community leaders who are here.

So once again, I thank you so much for coming. You know we do town halls all the time, but just to note this is different than a town hall. This is a formal hearing.

So I want to begin by introducing our panelists.

Professor Michael Romano is the Director of the Three Strikes Project and Justice Advocacy Project, and a Lecturer in Law at Stanford Law School. Professor Romano teaches Criminal Justice Policy and Advanced Criminal Litigation Practice, and has published several scholarly and popular press articles on criminal law, sentencing policy, prisoner reentry and recidivism, and mental illness in the justice system.

Michael also co-authored successful statewide ballot measures in California, the Three Strikes Reform Act, Proposition 36, and the Safe Neighborhoods and School Act, Proposition 47.

Ms. Taina Vargas-Edmond is the Co-Founder and Executive Director of Initiate Justice. Initiate Justice was created by and for incarcerated people, formerly incarcerated people, and people with incarcerated loved ones, and represents 15,000 incarcerated members and organizers, both incarcerated and on the outside. One of Initiate Justice's successful campaigns was in support of Proposition 57, approved by the voters in 2016. It expanded the applicability of earned time credits for successful completion of education and rehab programs.

Professor Charis Kubrin is a Professor of Criminology, Law, and Society at the University of California-Irvine. Her research focuses on neighborhood correlates of crime, with an emphasis on race and violent crime. Recent work in this area examines the immigration-crime nexus across neighborhoods and cities, as well as accesses the impact of criminal justice reform on crime rates. Professor Kubrin co-authored the only effort to evaluate systematically Proposition 47's impact on California crime rates, which found that the reform cannot be linked to any rise in crime.

We welcome our witnesses and thank them for participating in today's hearing. Please note that your written statement will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes.

And to help you stay within that time, there is a timing light. Where is that timing light? Oh, okay, there is that big timing light. When the time expires, we need you to conclude your testimony.

We will now proceed under the 5-minute rule with questions.

Before we go to that, we will have each panelist speak for 5 minutes, and then our panel here will engage in questions. Each member on the panel will have 5 minutes to question you.

Mr. Romano.



**STATEMENTS OF MICHAEL ROMANO, DIRECTOR, THREE STRIKES PROJECT AND JUSTICE ADVOCACY PROJECT AND LECTURER IN LAW, STANFORD LAW SCHOOL; TAINA VARGAS-EDMOND, INITIATE JUSTICE; CHARIS E. KUBRIN, PROFESSOR, DEPARTMENT OF CRIMINOLOGY, LAW AND SOCIETY, UNIVERSITY OF CALIFORNIA-IRVINE**

**STATEMENT OF MICHAEL ROMANO**

Mr. ROMANO. Thank you, Chair Bass and other members of Congress. It is an honor to be here today.

My name is Michael Romano. I teach criminal justice policy at Stanford Law School. As part of that work, I represent people who are sentenced to life in prison for non-violent crimes and help to reform the laws that put them there in the first place.

Ms. BASS. Hold on one second.

Can people in the back hear? Can everybody hear? Okay, good. Pull your mic a little bit closer. Okay.

Mr. ROMANO. Is that better?

Ms. BASS. Yes.

Mr. ROMANO. All right.

As the Chair mentioned, I was intimately involved with three recent ballot measures enacted here in California, Propositions 36, 47, and 57, plus other reforms which have sustained a remarkable and ongoing movement to reduce California's prison population.

I would like to make three main points with my testimony today. First, California has successfully reduced our prison population by 26 percent, or 45,000 inmates, and reduced crime at the same time.

[Applause.]

Mr. ROMANO. Since the peak of California's prison boom in 2006, violent crimes in California are down 17 percent, and property crimes are down 27 percent. You can reduce prison sentences and crime rates at the same time. It is a fact.

Second, despite our successes, legislative action seems to lag behind public opinion. I would like to single out Proposition 36, the reform to California's Three Strikes law for a minute, because it was the first law in California to roll back prison sentences because it was enacted by voters and because it is the reform with which I am most familiar.

We first went to Sacramento, and we couldn't get out of committee. Our allies, Democrats, liberal activists, said it couldn't be done. They worried about Willy Horton.

Our opponents asked: "What do you think is going to happen by reducing Three Strike sentences, even for minor crimes like shoplifting and drug possession? We already know," they said, "they will commit new crimes and kill innocent people." That is a direct quote.

They were wrong.

Proposition 36 passed with 70 percent of the statewide vote and a majority in every county in the state.

[Applause.]

Mr. ROMANO. Even in red counties that voted for Mitt Romney. Over 2,000—

[Laughter.]

Ms. BASS. They think it is funny that people voted for Mitt Romney.

Mr. ROMANO. It is a big state.

Over 2,000 hopeless recidivists and career criminals have been freed under Proposition 36, and their recidivism rate is almost two times better than the state average.

Voters want criminal justice reform. In three straight elections we have overwhelmingly passed initiatives that reduced criminal punishments for almost all crimes. The least popular of these reforms, Proposition 47, passed by a two-to-one margin. New polling shows that likely 2020 voters, and even crime survivors in California, all support continued reform. And as you surely know, criminal justice reform is now a bipartisan issue.

I submit that the politics of "tough on crime" is over and we must take the opportunity to reexamine the reform laws that we know don't help public safety but instead inflict misery, destroy families and communities, and cost billions and billions of dollars.

Finally, so much work remains to be done. Far too many people still remain behind bars. I know them personally because I am their lawyer. I represent Malcolm McGee, who is serving a mandatory sentence of life without the possibility of parole in Federal prison for a non-violent drug crime. His prior strikes are misdemeanors. He has never committed a violent crime. He has already served 20 years. He has zero prison rule violations, hundreds and hundreds of hours of educational and vocational programming, and a loving family waiting, hoping, and praying for him to come home.

I also represent Alejandro Nolkemper, who is serving a life sentence for breaking a church window here in Los Angeles. That is now a misdemeanor. She is transgender and fears for her safety in prison, so she commits minor rule violations, like breaking her cell window, to intentionally get sent to solitary confinement, where she feels safe. In solitary, she has no access to programming, which is required for her release. So she, too, remains in prison for the rest of her life.

Finally, there is Stanley Bailey. Stanley was sentenced to life for possession of drug paraphernalia under the Three Strikes law. After serving more than 20 years, he got lucky and was released under Proposition 36 in 2014. He went to a halfway house, volunteered for a truck driving school, eventually got his commercial driving license, and he also decided to give back. He came to work for my office helping to support folks who are released from prison.

[Applause.]

Mr. ROMANO. Then he did it for the White House, the Obama White House, traveling the country and meeting prisoners released under executive clemency, welcoming them to a new, free world, and helping them integrate into society. His work was recognized by the Obama Administration as a Champion of Change.

There are thousands of Stanley Baileys in prison across the country today. They are changed people. They are good people. They don't need to be there, and we should all work to get them out.

[Applause.]

Mr. ROMANO. I am very proud to say that the one and only Stanley Bailey is here today and is here to tell his story himself.

Thank you all very much for your time. I look forward to answering your questions.

[Applause.]

[The statement of Mr. Romano follows:]

**WRITTEN TESTIMONY OF MICHAEL ROMANO  
DIRECTOR OF THE STANFORD LAW SCHOOL THREE STRIKES AND JUSTICE  
ADVOCACY PROJECT**

**COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**“CALIFORNIA CRIMINAL JUSTICE REFORM:  
POTENTIAL LESSONS FOR THE NATION”**

**JULY 13, 2019**

**Introduction**

Chairwoman Bass and other Committee Members, thank you for the opportunity to testify at this special hearing on criminal justice reform in California and potential lessons for the nation. My name is Michael Romano. I am the Director of the Three Strikes and Justice Advocacy Project at Stanford Law School. I am also the founding Director of the Criminal Defense Clinic at Stanford Law School, and I currently serve on several boards and advisory committees related to criminal justice policy. My primary research interests and teaching responsibilities involve criminal sentencing law, recidivism and prisoner reentry, post-conviction litigation strategies, and related policy development and implementation. As part of my work at Stanford, I supervise an experiential-learning program where students assist in the direct representation of prisoners across the country serving life sentences for nonviolent crimes.

On behalf of, and in partnership with, the NAACP Legal Defense and Educational Fund, I have also been directly involved with the drafting, enactment, and implementation of several criminal justice reform measures, including successful ballot statewide measures in California known as Proposition 36 (Three Strikes Reform Act of 2012) and Proposition 47 (The Safe Neighborhoods and Schools Act of 2014). In total, this work has effectively reduced sentences and provided an opportunity for early release for over 15,000 nonviolent, low-risk prisoners, including over 5,000 prisoners serving life sentences for nonviolent crimes under California’s “Three Strikes and You’re Out” law. I have also successfully litigated the reversal of mandatory minimum federal life sentences and partnered with the Obama Administration and United States Department of Justice regarding President Obama’s executive clemency program.

In this testimony, I seek to make five points. First, over the past decade, California has led the country in reducing its prison population while at the same time substantially reducing violent and property crime rates. Second, California has accomplished its prison downsizing under a variety of legislative and regulatory reforms on state and local levels, each with distinct political and policy strategies and objectives. Third, despite the state’s successful recent track record in criminal justice reform, legislative action in California has dragged behind public opinion, as multiple statewide surveys, including polls of crime survivors and likely voters, show continued public support for prison and jail downsizing. Fourth, although California has made

great strides, the state's prisons and jails remain unconstitutionally overcrowded and for some critical subgroups, including prisoners suffering from mental illness, prison conditions may be worsening. Finally, new pilot programs and proposals in California deserve further development may present inspiration and opportunities for other jurisdictions throughout the country.

**I. California Has Dramatically Reduced Its State Prison Population and Reduced State Crime Rates at the Same Time**

Over the past decade, California has reduced its prison population by 26 percent.<sup>1</sup> During the past five years in particular, no other state has grappled as vigorously with its prison policies or enacted and implemented more reforms to reduce its prison and jail populations than California. In fact, to the extent that the total *national* prison population is on the decline, that decline is largely attributable to prison downsizing in California. Between 2006 and 2014, California reduced its prison population by more than 37,000 prisoners.<sup>2</sup> Over the same period of time, the combined population of all other state prisons and the federal system slightly *increased*.<sup>3</sup>

Because there is considerable public debate about the efficacy and impact of recent criminal justice reform measures in California, and particularly any corresponding impact on California's crime rates, I will begin with several undisputed facts. I will then attempt to untangle issues leading to controversy among criminal justice officials, advocates, and academics.

First, it is undisputed that California has dramatically reduced the population of state prisoners from a peak of 170,794 inmates in 2006. Today, California's total prison population is 125,472—reflecting a 26 percent decrease (over 45,000 prisoners).<sup>4</sup>

Second, it is also undisputed that during this period of prison downsizing crime rates in California have decreased substantially. Between 2006 and 2018, violent crime in California decreased by 17 percent and property crime decreased by 26 percent, according to the most recent data released by the California Department of Justice this month.<sup>5</sup> In fact, California has

<sup>1</sup> Cal. Dept. of Corrections and Rehabilitation (“CDCR”), Office of Research, “Monthly Total Population Report Archive,” *available at* [www.cdcr.ca.gov/research/monthly-total-population-report-archive](http://www.cdcr.ca.gov/research/monthly-total-population-report-archive)

<sup>2</sup> *Id.*

<sup>3</sup> See U.S. Bureau of Justice Statistics, “Total Correctional Population,” *available at* [www.bjs.gov](http://www.bjs.gov).

<sup>4</sup> CDCR, “Monthly Total Population Report Archive.”

<sup>5</sup> Becerra, et al., “Crime in California 2018,” California Dept. of Justice, California Justice Information Services Division (Jul. 2, 2019). In 2006, the rate of violent crimes in California was 535.6 per 100,000 residents. the rate of violent crimes in California in 2018 was 444.1 per 100,000 residents (17 percent decrease). In 2006, the rate of property crimes in California was 3,189.3 per 100,000 residents. In 2018, the rate of property crimes in California was 2,362.8 per

not seen similar levels of violent crime rates since the 1960s. Property crime rates have never been lower, according to the recorded history of the state Department of Justice.<sup>6</sup>

Third, although a variety of strategies, laws, and regulations drove the downsizing of California's prison population, the individual beneficiaries of reforms enacted in California—those prisoners released earlier than expected due to changes in law—have dramatically outperformed expectations with recidivism rates well below state averages. Perhaps most impressive are those who have been released early under reforms to California's Three Strikes law by Proposition 36 in 2016.<sup>7</sup> When the Three Strikes statute was originally enacted in 1994, proponents argued that the law would “keep career criminals who rape women, molest innocent children, and commit murder, behind bars where they belong . . . [and] California taxpayers will no longer have to pay the outrageous costs of running career criminals through the judicial system's revolving door over and over again.”<sup>8</sup> When reforms to the Three Strikes law were proposed in 2012, opponents warned, “What do you think these newly released hardened criminals will do once they get out of prison? We already know the answer to that: They will commit more crimes, harm or kill more innocent victims, and ultimately end up right where they are today—back in prison.”<sup>9</sup>

In fact, people convicted of nonviolent crimes, sentenced to life under the Three Strikes law, and released early under Proposition 36 have far outperformed all other people released from state prison.<sup>10</sup> According to data recently provided by the California Department of Corrections, the recidivism rates of those released early under Proposition 36 is 40 percent better than the state's average recidivism rate.<sup>11</sup>

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100,000 residents (26 percent decrease). *See also* Finch, “Crime continues to drop in California: Here are the Numbers for Your County,” *SACRAMENTO BEE* (Jul. 10, 2019) (“Most violent and property crimes fell last year, continuing an ongoing decline in California, according to statistics released this month by the state Attorney General.”)

<sup>6</sup> Becerra, et al., “Crime in California 2018,”

<sup>7</sup> *See* Cal. Penal Code § 1170.126 (establishing a mechanism for early release of most prisoners sentenced to life under California's Three Strikes law for nonviolent and non-serious crimes).

<sup>8</sup> Reynolds, Scully & Huffington, “Argument in Favor of Proposition 184,” California Ballot Pamphlet, (Nov. 8, 1994).

<sup>9</sup> Royal, Adams & Salerno, “Argument Against Proposition 36,” California Official Voter Information Guide, (Nov. 6, 2012).

<sup>10</sup> *See* Eckholm, “Out of Prison, and Staying Out, After 3rd Strike in California,” *NEW YORK TIMES*, (Feb. 26, 2015); Morain, “Three-Strikes Changes Appear to Be Working,” *SACRAMENTO BEE* (Apr. 13, 2014).

<sup>11</sup> 27.6 percent of people released under Proposition 36 have been convicted of a new crime within three years of their release. That compares to 46.1 percent of all state prisoners in California have been convicted of a new crime within three years of their release. *See* Cal. Dept. of Corrections and Rehabilitation, “Outcome Evaluation Report,” (updated Jun. 2018). Prop. 36 data provided directly by the Dept. of Corrections.

Despite the apparent success of California's prison downsizing efforts, and general trend of crime rates, of some have argued that the reforms have endangered public safety.<sup>12</sup> The controversy focuses around two central questions: (1) Over what period of time should we track crime rates? and (2) Can we attribute changes in crime rates to specific sentencing reforms?

First, there is no doubt that the rate of violent crime between 2014 and 2017 went up, approximately 12 percent, and opponents of reform point to this data to argue that prison downsizing reforms—particularly Proposition 47, which was enacted in November 2014—are endangering public safety.<sup>13</sup> Some attributed California's recent criminal justice reforms to especially violent crimes, including the murder of a police officer in Whittier, California, in 2017, even though further investigation proved the reforms were completely unrelated.<sup>14</sup>

A closer, and I believe fairer, evaluation of the data undermines many of the concerns raised by reform opponents. First, the time period during which violent crime increased in California (2014 to 2017) turned out to be temporary and inconsistent with long term trends. As discussed above, over the past decade since California began reducing its prison population both violent and property crime rates are undeniably down. Second, even within the 2014 - 2017 time-period, nonviolent property crime rates decreased.<sup>15</sup> This is especially relevant because nearly all of the reforms enacted in California have reduced penalties for nonviolent crimes, leaving punishments for violent offenders largely intact. Third, according to the most recent crime reports released by the California Department of Justice this month, the statewide violent crime rate for 2018 was *down* compared to 2017.<sup>16</sup>

It is also difficult to attribute specific legislative changes to crime rate outcomes. For example, crime rates go up in some parts of the state when they are going down in other localities at the same time. As the noted by the *Los Angeles Times*, "What single factor can explain the fact that [in 2017] violent crime went up 6% in Los Angeles but fell 6% in Sacramento?"<sup>17</sup> Also, as noted, statewide violent crime went up slightly in 2017 but dropped in 2018 without any significant change to statewide laws, practices, or policies.<sup>18</sup>

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<sup>12</sup> See, e.g., VanSickle & Villa, "California transformed its justice system. But now crime is up, and critics want rollbacks," LOS ANGELES TIMES (Dec. 20, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> See Times Editorial Board, "County mistakes, not reform laws, allowed the alleged killer of a Whittier police officer to go free," LOS ANGELES TIMES, (May 10, 2018).

<sup>15</sup> Becerra, "Crime in California 2018."

<sup>16</sup> *Id.*

<sup>17</sup> VanSickle & Villa, "California transformed its justice system. But now crime is up, and critics want rollbacks," LOS ANGELES TIMES, (Dec. 20, 2018).

<sup>18</sup> Finch, "Crime continues to drop in California: Here are the Numbers for Your County," SACRAMENTO BEE, (Jul. 10, 2019) ("The trend toward a less violent society is not consistent

Factors contributing to crime rates are notoriously difficult to isolate, and I will not attempt to do so here.<sup>19</sup> However, there can be little legitimate dispute that the prevailing crime rate trend in California since the state began reducing its prison population is down, although that trendline is not perfectly flat and even. Changes in crime rates over short periods of time will inevitably reflect some volatility. Of course, we cannot say that downsizing California prisons is responsible for California's falling crime rates.<sup>20</sup> But we can say that the fear of reform critics who warned that reducing the state's prison population would gravely endanger public safety seems unfounded.

While California dramatically reduced its state prison population and crime rates at the same time, the state's criminal justice problems are far from over. The state remains under a federal court order to implement a long-term "durable" solution to prevent future crowding,<sup>21</sup> most of the state's county jail systems are also overburdened and under orders capping capacity,<sup>22</sup> the Los Angeles County Jail (the nation's largest) is under a federal consent decree due to longstanding mistreatment of mentally ill inmates,<sup>23</sup> the state spends over \$12 billion annually on its prison system (not including jails),<sup>24</sup> and far too many people remain behind bars without any public safety justification. California should continue to revisit its criminal justice laws and policies to maximize public safety and minimize unnecessary suffering in the state's prisons and jails.

## **II. California Downsized Prisons Under a Variety of Reforms with Different Political, Administrative, and Policy Strategies and Outcomes**

across every region, but overall — and with a few exceptions — people are committing fewer crimes per capita today than a decade ago.”)

<sup>19</sup> For broader discussion see National Research Council of The National Academies, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING THE CAUSES AND CONSEQUENCES*, (2014); Zimring, *THE GREAT AMERICAN CRIME DECLINE*, Oxford Univ. Press, (2006).

<sup>20</sup> Cf. Holder, “Keynote for Shifting Law Enforcement Goals to Reduce Mass Incarceration,” Brennan Center for Justice, (Sept. 23, 2014) (“High incarceration rates and longer than necessary prison sentences have not played a significant role in materially improving public safety, reducing crime, or strengthening communities . . . In fact, the opposite is often true.”)

<sup>21</sup> *Coleman v. Brown*, 960 F. Supp. 2d 1057 (E.D. Cal. 2013).

<sup>22</sup> See St. John, “Gov. Jerry Brown’s Prison Reforms Haven’t Lived up to His Billing,” *LOS ANGELES TIMES* (Jun. 21, 2014) (describing crowded conditions in many county jails, including “scores of prisoners . . . stacked three high in steel bunk beds” in at least one county facility); Lawrence, Stanford Law School, “Stanford Law School Criminal Justice Center, Court-Ordered Population Caps in California County Jails,” (Dec. 2014).

<sup>23</sup> See Chang, “L.A. County Unable to Avert Federal Oversight of Jails,” *LOS ANGELES TIMES*, (Oct. 2, 2014).

<sup>24</sup> CDCR’s Budget for Fiscal Year 2018-19 available at [www.cdcr.ca.gov/budget](http://www.cdcr.ca.gov/budget).



In 2011, the United States Supreme Court issued its landmark decision in *Brown v. Plata*, ruling that California's prison population had reached unsustainable levels.<sup>25</sup> The Court noted that the state's prison system was designed to hold roughly 80,000 people but operated with twice that number of prisoners for over 11 years. Overcrowding led to neglect of prisoners in need of medical and psychiatric care, amounting to cruel and unusual punishment in violation of the Eighth Amendment. Although *Plata* ushered in a wave of reforms to California's prison system and sentencing laws, the state's prison downsizing efforts began even before the Supreme Court decision in 2011.

**Limiting Parole and Probation Revocations.** Beginning in 2009, the state legislature recognized that a significant number of people in prison were incarcerated for violations of conditions of parole and probation, rather than for committing new crimes.<sup>26</sup> Furthermore, many of these violations were for minor so-called "technical violations," including missing appointments with parole or probation officers or failing to update authorities with proper contact information. Reducing the number of people incarcerated for minor parole or probation violations seemed like a good place to begin reducing the prison population. In 2009, the state legislature enacted two bills to accomplish this goal. First, Senate Bill ("SB") X3 18 launched a program known as Non-Revocable Parole ("NRP"), which targeted certain prisoners released on parole deemed low risk to reoffend. These people had committed nonviolent crimes, had no recent serious in-prison disciplinary violations, and had been evaluated by the Department of Corrections and deemed not a high risk for recidivism. Under NRP, these select released prisoners could only be returned to prison for committing a new crime, not for a technical parole violation.<sup>27</sup> The second measure was SB 678, which targeted probation violations administered by county probation offices. SB 678 did not change the rules for who could be sent to prison for violating probation rules but instead offered financial incentives to county probation offices if they reduced the number of people returned to state prison for probation violations that did not amount to new crimes.<sup>28</sup> These funds were used to increase reentry support services.<sup>29</sup> In total, it is estimated that these programs combined reduced California's prison population by approximately 6,000 people.<sup>30</sup>

**2011 - Public Safety Realignment (AB 109).** The largest drop in California's state prison system is attributable to a series of measures known as "Public Safety Realignment,"

<sup>25</sup> *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>26</sup> See Grattet, Petersilia, et. al. "Parole Violations and Revocations in California: Analysis and Suggestions for Action." *Federal Probation Reporter*, Vol. 73, No. 1 (2008).

<sup>27</sup> See Cal. Penal Code § 3000.03 (2010); Cal. Dept. of Corrections and Rehabilitation, "Non-Revocable Parole" available at [www.cdcr.ca.gov/parole/parole/non-revocable-parole](http://www.cdcr.ca.gov/parole/parole/non-revocable-parole).

<sup>28</sup> See Cal. Penal Code §§ 1228 et. seq. (2009)

<sup>29</sup> *Id.*

<sup>30</sup> Judicial Council of California, "Program Findings, Community Corrections, (SB 678)" available at [www.courts.ca.gov/programs-communitycorrections.htm](http://www.courts.ca.gov/programs-communitycorrections.htm).

enacted in April 2011, one month prior to the Supreme Court's decision in *Plata*. Like the reforms to parole and probation violations, Realignment targeted prisoners convicted of nonviolent offenses and aimed to reduce the state's prison population without adjusting sentencing laws.<sup>31</sup> Rather than reducing sentences, Realignment required that most people convicted of non-serious and nonviolent crimes be incarcerated in county jails, rather than in state prison.<sup>32</sup> Realignment also shifted the responsibility of post-incarceration supervision of these inmates from state officials to county probation departments. In exchange for the new burden and responsibilities placed on county jail and probation systems, Realignment also provided a significant amount of state funding to county governments to invest in expanding jail capacity, alternatives to incarceration, or other almost any other program that the county chose.<sup>33</sup> In total, it is estimated that Realignment reduced California's prison population by over 27,000 inmates.<sup>34</sup>

**2012 - Three Strikes Reform (Proposition 36).** Although California prison downsizing began in earnest with Realignment, the state had done nothing to revisit its sentencing laws, which were major drivers of the prison population boom in the first place. Most conspicuously, California had the county's harshest and most frequently used (non-capital) sentencing scheme in its "Three Strikes" law, which imposed a life sentence for any felony if the defendant had two prior convictions for crimes defined as serious or violent by the state Penal Code.<sup>35</sup> By 2011, over 8,700 people had been sentenced to life under the Three Strikes law—most of whom were imprisoned for nonviolent third strike crimes, including crimes as minor as shoplifting and

<sup>31</sup> See generally, Petersilia & Cullen, "Liberal but not Stupid: Meeting the Promise of Downsizing Prisons," 2 Stan. J. Crim. L. & Pol. 1 (2015) (discussing Realignment as an "unprecedented experiment in downsizing prisons.")

<sup>32</sup> It is often (misleadingly) stated that Realignment "moved" state prisoners to the county jail system. This is misleading because no individual state inmate was ever physically moved from prison to jail. Instead, Realignment merely directed new low-level offenders to county jails, thus reducing the number of new admissions in the state prison system.

<sup>33</sup> Despite these financial sweeteners, county jails were in no position to house the new wave of incoming inmates "realigned" from prison to jail. Many jail systems were themselves overcrowded and in 2014 alone county jails reported releasing 13,000 inmates early due to overcrowding. See Public Policy Institute of California, "Public Safety Realignment: Impacts So Far," (Sept. 2015) available at: [www.ppic.org/publication/public-safety-realignment-impacts-so-far/](http://www.ppic.org/publication/public-safety-realignment-impacts-so-far/)

<sup>34</sup> See Quan, et. al., STANFORD CRIMINAL JUSTICE CENTER, REALLOCATION OF RESPONSIBILITY: CHANGES TO THE CORRECTIONAL SYSTEM IN CALIFORNIA POST-REALIGNMENT (Jan. 2014); Cate & Weisberg, STANFORD CRIMINAL JUSTICE CENTER, BEYOND LITIGATION: A PROMISING ALTERNATIVE TO RESOLVING DISPUTES OVER CONDITIONS OF CONFINEMENT IN AMERICAN PRISONS AND JAILS (Dec. 2014).

<sup>35</sup> See Cal. Penal Code §§ 667, 1170.12.

simple drug possession.<sup>36</sup> In November 2012, California voters approved Proposition 36, a ballot measure that reformed California's Three Strikes law to eliminate life sentences for nonviolent crimes.<sup>37</sup> Proposition 36 passed with 69 percent support of state voters. Proposition 36 also included a retroactive provision, allowing prisoners currently serving life sentences for nonviolent crimes to apply for early release. These inmates received shorter sentences (often amounting to immediate release) unless the prosecutors proved in court that their release posed an "unreasonable risk of danger to public safety."<sup>38</sup> In total, over 2,200 people sentenced to life for non-serious, nonviolent crimes have been released under Proposition 36.<sup>39</sup> An unknown number of additional people have avoided life sentences for nonviolent crimes since the enactment of Proposition 36.

**2014 - Safe Neighborhoods and Schools Act (Proposition 47).** Following the success of Proposition 36, California voters in 2014 approved a second, further reaching sentence reduction measure, Proposition 47, which reduced punishments for six common nonviolent crimes, including shoplifting, petty theft, forgery, and simple drug possession. Proposition 47 passed with 60 percent support of state voters. Under Proposition 47, these crimes became mandatory misdemeanors and could not be prosecuted as felonies. Like Proposition 36, Proposition 47 also operated retroactively and allowed certain inmates to apply for early release if they were currently incarcerated for one of the enumerated offenses and could establish that their release would not endanger public safety.<sup>40</sup> Proposition 47 also created a state fund from savings realized by the state because it was incarcerating fewer people. This fund, which grew to \$78.4 million this year, distributes money to mental health services, juvenile delinquency programs and victim services. In total, 7,800 people incarcerated in state prison for non-serious, nonviolent crimes have been released under Proposition 47. In addition, it is estimated that 10,000 people incarcerated in county jails were released early under Proposition 47.<sup>41</sup> An unknown number of additional people have avoided longer sentences since the enactment of Proposition 47.

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<sup>36</sup> See Tiabbi, "Cruel and Unusual Punishment: The Shame of Three Strikes Laws," *ROLLING STONE* (Mar. 27, 2013).

<sup>37</sup> See generally Mills & Romano, "Passage and Implementation of the Three Strikes Reform Act of 2012: Proposition 36," *Fed. Sent. Reporter*, Vol. 25, No. 4 (Apr. 2013).

<sup>38</sup> See Cal. Penal Code § 1170.126; *People v. Superior Court (Kaulick)* 215 Cal. App. 4th 1279 (Ct. App. 2013).

<sup>39</sup> See Cal. Dept. of Corrections and Rehabilitation, "September 15, 2016 Update to the Three Judge Court," filed Sept. 15, 2016 in *Plata, et. al. v. Brown*, Case No. 3:01-cv-01351 (N.D. Cal.).

<sup>40</sup> See Cal. Penal Code § 1170.18. Because Proposition 47 was not limited to extreme Three Strikes cases, it applied to a much larger group of inmates than Proposition 36.

<sup>41</sup> See Stanford Law School Justice Advocacy Project, "Proposition 47 Progress Report," (Oct. 2015) available at [www-cdn.law.stanford.edu/wp-content/uploads/2015/10/Prop-47-report.pdf](http://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/Prop-47-report.pdf).

**2016 - Public Safety and Rehabilitation Act (Proposition 57).** In 2016, then-Governor Jerry Brown led a third successful ballot measure campaign to address California's ongoing prison crisis.<sup>42</sup> Proposition 57 passed with 64 percent support of state voters. Unlike earlier ballot measures, Proposition 57 did not directly amend statutes setting sentence lengths, but instead gave broad authority to prison administrators, including the Board of Parole Hearings, to increase the amount of time a person could earn off his or her sentence with positive in-custody behavior and offering an opportunity for early parole to certain prisoners convicted of nonviolent crimes.<sup>43</sup> Because the credit-earning portion of Proposition 57 was not restricted to people with nonviolent convictions, it authorized the Department of Corrections to expand sentence-reduction programs for all prisoners, including those convicted of violent crimes.<sup>44</sup> Proposition 57 also included a provision that reduced the power of prosecutors to charge young people in adult court, shifting that responsibility to trial court judges.<sup>45</sup> Because Proposition 57 and related regulations only recently went into effect, its impact on California's prison population has not yet been substantial.<sup>46</sup>

### **III. Legislative Reforms Have Lagged Behind Public Opinion**

Since 2012, the most recent substantial reforms to California's sentencing laws and prison policy have been enacted by voter initiatives rather than through the legislature.<sup>47</sup> These reforms required voter approval for two reasons. First, because many of California's harsh sentencing laws were enacted by voters in the first place, thus practically speaking they can only

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<sup>42</sup> Proposition 57 declares the voters' purposes in approving the measure were to: "1. Protect and enhance public safety. 2. Save money by reducing wasteful spending on prisons. 3. Prevent federal courts from indiscriminately releasing prisoners. 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles." Ballot Pamp., Gen. Elec., (Nov. 8, 2016).

<sup>43</sup> See Cal. Const. art. I, § 32; Cal. Code of Reg. Tit. 15 § 3043, *et seq.* Although initially resisted by the administration, California courts eventually ruled that early parole opportunities established in Proposition 57 extended to approximately 4,000 people serving life sentences under the Three Strikes law for nonviolent offenses. See *In re Edwards*, 26 Cal. App. 5th 1181 (Ct. App. 2018).

<sup>44</sup> Inmates on death row or serving life without parole were excluded.

<sup>45</sup> See California Legislative Analyst's Office, "Implementation of Proposition 57" (Apr. 24, 2017) (summarizing all the reforms in Proposition 57).

<sup>46</sup> See Cal. Dept. of Corrections and Rehabilitation, "June 17 Update to the Three Judge Court," filed Jul. 8, 2019 in *Plata, et. al. v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.).

<sup>47</sup> To be sure, some reforms have been enacted by the California legislature over the decade. See, e.g., SB 260 (establishing youth offender parole hearings) (2013); SB 261 (expanding youth offender parole hearings) (2015); SB 10 (bail reform) (2018); SB 1437 (amending felony murder rule) (2018). Other reforms have been imposed by court order. See Cal. Dept. of Corrections and Rehabilitation, "September 15, 2016 Update to the Three Judge Court," filed Sept. 15, 2016 in *Plata, et. al. v. Brown*, Case No. 3:01-cv-01351 (N.D. Cal.).

be amended by subsequent voter approval.<sup>48</sup> Second, legislators (in California, at least) seem to lag behind voters who continue to support criminal justice reforms that reduce prison sentences.

As discussed above, voters convincingly passed three separate ballot measures in 2012 (Proposition 36), 2014 (Proposition 47), and 2016 (Proposition 57), reducing punishments for almost all prisoners in California, including those sentenced to life under the Three Strikes law and prisoners convicted of violent offenses. The least popular of these measures (Proposition 47) was still supported by two-thirds of California voters. Despite strong majorities of voters supporting these reforms, none would have gathered sufficient support to pass through the state legislature.<sup>49</sup>

Recent public opinion surveys show that California voters and even crime victims continue to support criminal reform and would likely approve further reductions to the state's sentencing laws. According to a recent poll of likely 2020 California voters, by a 2-to-1 margin, respondents believed that recent criminal justice reforms in the state had "not gone far enough" over those who said reforms had gone "too far."<sup>50</sup> Even crime victims appear support further criminal justice reforms in California. For example, according to a recent survey, 75 percent of crime survivors in California favor reducing sentence lengths by 20 percent for prisoners assessed to be a low risk to public safety, and directing the savings to fund more crime prevention and rehabilitation.<sup>51</sup>

Despite the apparent continuing public support for sentence reductions and prison downsizing, at least two initiatives have qualified for the November 2020 ballot in California that aim to roll-back recent reforms. The first would increase sentences for shoplifting (which were reduced by Proposition 47) and limit the power of parole authorities to release nonviolent offenders (enacted as part of Proposition 57). This measure is known as the "Reducing Crime and Keeping California Safe Act," and is supported by several law enforcement advocacy groups, including financing from California's prison guard union.<sup>52</sup> The second measure would

<sup>48</sup> See Romano, "A Different Kind of Sentencing Commission: A 'Smart' Solution for California and Model for Prison Downsizing Across the Country," 2 STAN. J. CRIM. LAW & POL. 44 (2015).

<sup>49</sup> In California, legislators can vote to put issues on the ballot for voter approval, but even this intermediate approach was politically untenable.

<sup>50</sup> Voter survey of 800 likely California voters conducted May 30, 2019 through June 2, 2019, by David Binder Research. Results were made available to me by the group that commissioned the survey.

<sup>51</sup> Californians for Safety and Justice, "California Crime Survivors Speak: A Statewide Survey of California Victims' Views on Safety and Justice," (Apr. 2019) *available at* [allianceforsafetyandjustice.org/wp-content/uploads/2019/04/201904-CSJ-CA-Crime-Survivors-Speak.pdf](https://allianceforsafetyandjustice.org/wp-content/uploads/2019/04/201904-CSJ-CA-Crime-Survivors-Speak.pdf)

<sup>52</sup> See Ronayne, "Bid to Toughen California Crime Laws Set for 2020 Ballot," U.S. NEWS AND WORLD REPORT, (Jul. 9, 2018).

repeal recent reforms to California's cash bail system and is supported by the bail bond industry.<sup>53</sup>

I suspect that voters will reject both of these measures this November, and I hope that will give legislators further evidence and encouragement to pursue new sensible criminal justice reforms that further reduce unnecessary prison sentences in California.

**IV. California's Prison Population Remains Unconstitutionally Overcrowded and Prisoners with Mentally Illness Appear Left Behind by Recent Reforms**

Although California has made great strides, the state prison system remains dramatically overcrowded. California's state prison system is designed to hold between 80,000 and 90,000 prisoners. Today, over 125,000 prisoners are in state custody.<sup>54</sup> The current annual budget for California's prison system is over \$12 billion.<sup>55</sup> Furthermore, California remains under federal court order to develop and implement a "durable solution" to the prison overcrowding problem, including improvements to prisoner medical and mental health care.<sup>56</sup>

It is especially troubling that prisoners suffering from mental illness seem to have been left behind by recent reforms. It appears that the number of California prisoners with mental illness and the severity of their symptoms are rising at the same time that criminal justice reforms have been enacted and implemented.<sup>57</sup> While the overall state prison population has decreased dramatically, the number of prisoners with mental illness continues to climb and is expected to grow in the years ahead. Over the past decade, the percentage of state prisoners with mental illness has increased by 77 percent.<sup>58</sup> It also appears that the severity of mental illness among prisoners is also on the rise. Over 30 percent of California prisoners currently receive treatment

<sup>53</sup> McGough, "The fate of California's cash bail industry will now be decided on the 2020 ballot," SACRAMENTO BEE, (Jan. 17, 2019).

<sup>54</sup> Approximately 117,000 of these people are incarcerated in state prisons with the remainder largely housed in private or other "contract" facilities. See Cal. Dept. of Corrections and Rehabilitation, Office of Research, "Monthly Total Population Report Archive," available at [www.cdcr.ca.gov/research/monthly-total-population-report-archive](http://www.cdcr.ca.gov/research/monthly-total-population-report-archive).

<sup>55</sup> CDCR's Budget for Fiscal Year 2018-19 available at [www.cdcr.ca.gov/budget](http://www.cdcr.ca.gov/budget).

<sup>56</sup> See generally *Plata, et. al. v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.).

<sup>57</sup> See Stanford Justice Advocacy Project, "Confronting California's Continuing Prison Crisis: The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise," (2017).

<sup>58</sup> Bien, "New Challenges Raised by Decarceration," at Western Society of Criminology, (Feb. 2017).

for a “serious mental disorder.”<sup>59</sup> Since 2012, the number of prisoners requiring enhanced mental health services has increased by over 60 percent.<sup>60</sup>

It is especially troubling that the problem of mental illness in California’s prisons may be deteriorating. Not only are criminal offenders suffering from mental illness generally considered less culpable for their crimes and more deserving of treatment and leniency, but the legal efforts at the forefront California’s prison downsizing movement were first lodged on behalf of prisoners with mental illness. As the Supreme Court noted in *Plata*, litigation over prison overcrowding in California began with a class action lawsuit filed in 1990 on behalf of prisoners with mental illness receiving inadequate psychiatric care. That case brought the first federal finding that California’s prisons were unconstitutionally overcrowded.<sup>61</sup>

It is arguable that recent reforms in California disadvantage prisoners with mental illness by awarding sentence reductions to inmates deemed low risk for recidivism. The reforms enacted in Propositions 36, 47 and 57 all provide early release for prisoners who are able to demonstrate that they are no longer a danger to public safety.<sup>62</sup> Inmates and criminal defendants with mental illness are frequently unable to meet this burden due to difficulty articulating their case and coordinating with counsel, bias against people with mental illness, and lack of adequate community psychiatric care resources to support successful reentry.<sup>63</sup> Future reforms should take special care to address the over-incarceration of prisoners with mental illness.

#### **V. New Programs in California Show Promise and May Present Inspiration for Other Jurisdictions Throughout the Country.**

California was once the national vanguard of tough-on-crime politics; today it is one of the states leading the trend in the opposite direction. The reversal has been extraordinary, and I hope instructive. As noted, however, more work remains and continued reform efforts are underway. At least three new programs and proposals deserve special mention.

**Sentence Reconsideration.** Last year, California enacted and implemented new program to review sentences of prisoners with records of exceptionally meritorious rehabilitative

<sup>59</sup> See Cal. Dept. of Corrections and Rehabilitation & Cal. Correctional Health Care Services, “Mental Health Bed Need Study,” (Jan. 8, 2016). There is also evidence that the state’s projections underestimate the current number of prisoners with mental illness by undercounting Latino prisoners. See also Stanton, “Prison officials did not intentionally mislead judge on inmate psychiatric care, report says,” SACRAMENTO BEE, (May 3, 2019);

<sup>60</sup> Cal. Dept. of Corrections and Rehabilitation & Cal. Correctional Health Care Services, “Mental Health Bed Need Study,” (Jan. 8, 2016).

<sup>61</sup> *Plata*, 563 U.S. at 506.

<sup>62</sup> See Cal. Const. art. I, § 32; Cal. Code of Reg. Tit. 15 § 3043, *et seq.*; Cal. Penal Code §§ 1170.126(f), 1170.18(b).

<sup>63</sup> See Stanford Justice Advocacy Project, “Confronting California’s Continuing Prison Crisis: The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise.” (2017).

conduct.<sup>64</sup> The new law and regulations direct prison administrators to identify prisoners who are deemed fully rehabilitated. It is a high bar. In order for an inmate to qualify for relief under this program, the Secretary of the Department of Corrections must personally certify that the prisoner's rehabilitation is "so extraordinary beyond simply complying with all regulations and procedures" that he or she has "changed as a person and would be a positive asset to the community" if released.<sup>65</sup> Selected prisoners are then referred back to a sentencing court, which can choose to reduce the prisoner's sentence. The judge can also reject the recommendation of prison officials and keep the prisoner's original sentence intact.<sup>66</sup> Since the program's inception in March 2018, the Department of Corrections has recommended new sentences for over 75 prisoners, the majority of whom have received some sentence reduction from the court.

**Enhanced Reentry.** The California Department of Corrections' new enhanced community reentry program appears to be successfully reducing the amount of time selected prisoners spend behind bars, accelerate reentry prospects, and reduce recidivism.<sup>67</sup> Program participants are prisoners in the final year or two of their sentences who agree to leave their traditional prison facility and enter a community-based facility. Participants wear electronic ankle bracelets, participate in rehabilitation programs, work off site, and are permitted family visits and other benefits of slowly integrating to the community. The programs are staffed primarily by nonprofit service providers with on-site security and supervision by Department of Correction staff. Participants remain prisoners under Department of Corrections authority and are returned to prison for any violation of program rules. The program is designed to last one year, after which participants transition to long-term housing and continue with parole or probation supervision. According to the Department of Corrections, the program improves recidivism rates.<sup>68</sup> Today, approximately 1,000 inmates are participating in this program in eight sites throughout the state. The program services a small fraction of over 30,000 prisoners released from California state prison every year and should be expanded.

**Behavioral Health Facility.** Two-thirds of jail inmates across the country (64 percent) suffer from mental illness, according to the United States Department of Justice, and county jails have become the nation's largest mental health providers.<sup>69</sup> A proposal by the San Francisco

<sup>64</sup> See Cal. Penal Code § 1170(d)(1).

<sup>65</sup> Cal. Code Regs. tit. 15, § 3076.1(a)(1).

<sup>66</sup> See *Dix v. Superior Court*, 53 Cal. 3d. 442 (1991).

<sup>67</sup> The men's program is the Male Community Reentry Program (MCRP); the women's program is the Custody to Community Transitional Reentry Program (CCTRP). The program was originally established under Penal Code §§ 6250(a), 6258.

<sup>68</sup> Recidivism data provided directly to me by program administrators. Cf. Petersilia & Cullen, "Liberal but Not Stupid: Meeting the Promise of Downsizing Prisons," 2 STAN. J. CRIM. L. & POL. 18, 22 (2015) ("We also must recognize that the number of proven programs, especially for a reentry programs, is in short supply.")

<sup>69</sup> See James & Glaze, "Bureau of Justice Statistics Special Report: Mental Health Problems of Prison and Jail Inmates," U.S. Dept. of Justice (rev. Dec. 14, 2006); Hare, "Population 17,049: Welcome to America's Largest Jail," CNN, (Sept. 26, 2017); see also Ho, "Police slow in



District Attorney to develop a new facility to safely house and treat jail inmates with mental illness may provide a promising solution to this critical problem and deserves further study and consideration.<sup>70</sup> The proposed “Behavioral Health Justice Center,” would be neither a jail nor a hospital, but a highbred facility specifically designed to house, treat, and rehabilitate jail inmates with mental illness. Studies show that incarceration frequently exacerbates mental illness and undermine a person’s ability to function in society.<sup>71</sup> As currently constructed, county jails are generally ill equipped to properly treat mental illness. Likewise, county hospitals are unable to safely house or restrain people accused of crimes. Incarceration in county jails are frequently counterproductive to a defendant’s psychiatric stability and public safety. The problem of mental illness and public safety is perhaps the largest and most difficult issues in criminal justice today. San Francisco’s proposed Behavioral Health Justice Center and other efforts like it may be a significant step in the right direction.<sup>72</sup>

### **Conclusion**

Thank you for the opportunity to testify before this Committee. California has made great strides in reforming its criminal justice system while simultaneously improving public safety and reducing crime rates. The reforms have not only proven successful as a matter of policy, they remain politically popular, and California voters support further efforts to downsize the state’s prison and jail populations. While work remains to be done—too many people remain unnecessarily behind bars in California—I hope California’s experience can be an inspiration and model for the rest of the country.

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making progress in confronting mentally ill,” SAN FRANCISCO CHRONICLE, (Dec. 19, 2015) (reporting that up to 80% of calls to San Francisco police involve people with mental illness).

<sup>70</sup> See Barbra, “Gascon, supes introduce mental health alternative to new jail,” SAN FRANCISCO EXAMINER, (Jan. 5, 2016); Haney, et. al., “Justice That Heals: Promoting Behavioral Health, Safeguarding the Public, and Ending Our Overreliance on Jails,” *available at* [sfdistrictattorney.org/sites/default/files/Document/BHJC%20Concept%20Paper\\_Final\\_0.pdf](http://sfdistrictattorney.org/sites/default/files/Document/BHJC%20Concept%20Paper_Final_0.pdf).

<sup>71</sup> See Bewley & Morgan, “A national survey of mental illness services available to offenders with mental illness: Who is doing what?” 35 LAW AND HUMAN BEHAVIOR, 351-363 (2011); *see also* Haney, “Reforming Punishment: Psychological Limits to the Pains of Imprisonment,” (2006).

<sup>72</sup> See “Justice That Heals,” at p. 12-13 (describing similar efforts in Miami, Florida; Bexar County Texas; and Memphis, Tennessee).

Ms. BASS. Thank you.  
 Ms. Vargas-Edmond.

#### STATEMENT OF TAINA VARGAS-EDMOND

Ms. VARGAS-EDMOND. Good morning, Chair and members. My name is Taina Vargas-Edmond. I am the Founder and Executive Director of Initiate Justice, an organization that works to end mass incarceration by activating the political power of those who are directly impacted by it.

We organize currently incarcerated people, formerly incarcerated people, and their loved ones to fight for policy change that bring people home from prison and keep our communities safe.

Over the last few years, Initiate Justice has been part of the broader reform movement in California that has succeeded in reducing our prison population while at the same time reducing recidivism rates. Today I will discuss three of those sentencing reforms that I believe have had the most significant impacts: one, youth offender parole; two, ending the felony murder rule; and three, Proposition 57.

In 2013, 2014, and 2017, the California state legislature passed three pieces of legislation that created a youth offender parole program, meaning that people who were sentenced under the age of 18, under the age of 22, and under the age of 26, respectively, were given the opportunity to apply for early release, to go to the Parole Board sooner, while taking into consideration their mental and cognitive development because of their age. This program has been one of the most successful programs in not only reducing the California state prison population but also people who are released under youth offender parole have the lowest recidivism rates out of any group. For the first year that they were—for the first cohort of folks who were released, they had a one-year recidivism rate of zero percent, a two-year recidivism rate of zero percent, and a three-year recidivism rate of 2.2 percent.

[Applause.]

Ms. VARGAS-EDMOND. An important piece about those pieces of legislation and the other ones that I am discussing is that they were implemented retroactively, meaning that they do impact people who are currently incarcerated, which is critical in any policy reform that we are proposing.

The second piece of legislation that I will discuss is S.B. 1437, which was passed by the California state legislature just this last year, which reformed California's felony murder rule. In California, you could be sentenced to life for murder when you did not commit the murder if you were committing another felony at the time. So if you were, for example, a getaway driver, having no idea that a murder was being committed, you could still go to prison for murder the same as the person who actually committed the homicidal act.

This was changed last year, and now we have dozens of people who have been released throughout the state so far, and hundreds more who are awaiting hearing who are going to be resentenced for their actual participation in the crime—

[Applause.]

Ms. VARGAS-EDMOND [continuing]. And have the opportunity to come home.

Most significantly, I would like to discuss Proposition 57, which passed with an overwhelming majority in November of 2016. Proposition 57 did three things. One, it made it much more difficult for people who were convicted as youth to be sentenced as adults. Two, it created a parole opportunity for people sentenced to certain non-violent offenses. And three and most significantly, it created a credit earning program for 96 percent of people currently incarcerated in the California state prison system.

What is important about the credit earning portion of Proposition 57 is that it represented a paradigm shift in California, where we recognized that people who are currently incarcerated, one, need incentives to be able to invest in their own rehabilitation and transformation; and two, by offering folks these incentives and these tools, we are actually increasing their likelihood of success while they reenter society.

I am a person who has personally been impacted by Proposition 57, with my husband earning almost two years off of his sentence, and in three days we will celebrate one year since he has been home from prison.

[Applause.]

Ms. VARGAS-EDMOND. The issue with Proposition 57 is that the Department of Corrections and Rehabilitation was offered a lot of leeway in terms of how they implement the credit earning opportunities, and in response to Proposition 57, in response to these other retroactive policy reforms that I have discussed, I am also going to take some time to offer some recommendations for the state of California, and also things that I believe the Federal Government should keep in mind as you consider policy reforms as well.

One, we must close prisons. Despite our decreasing prison population, the California Corrections budget has continued to soar every single year. This is in part due to increasing medical and mental health costs for incarcerated people, but mostly due to the fact that prisons have continued to be in operation despite the fact that the population is going down. Facilities must close for us to eliminate these operating costs.

Two, we must implement more inclusive policy reforms. Many proposed policy reforms tend to address the political low-hanging fruit, the folks who are convicted of non-violent, non-serious, non-sex offenses. The fact of the matter is, especially in the state prison system, that most people are serving time for violent offenses, and we need to reconcile with that and consider how we are going to address these more serious offenses and think about solutions and not just punishment.

In that vein, three, we must expand restorative justice practices. Our existing criminal justice system—

[Applause.]

Ms. VARGAS-EDMOND. Our existing criminal justice system is punitive in nature, meaning that we punish people rather than looking at root causes, rather than focusing on healing and transformation of the individual and the victims and survivors of the offense.

[Applause.]

Ms. VARGAS-EDMOND. Four, we must end sentencing enhancements, including the Three Strikes law in California.

[Applause.]

Ms. VARGAS-EDMOND. Sentencing enhancements are meant to act as a deterrent for crime, but there is no evidence to suggest that sentencing enhancements have been effective. Our sentencing enhancement laws are so complicated that the average person is not familiar with them, so no one thinks, okay, let me not commit this offense because of Penal Code Section blah-blah-blah. And in California, we actually have more sentencing enhancements than we have penal code violations on the books.

And five, we must ensure that people directly impacted by incarceration are leading these policy reforms. People directly impacted by incarceration are leaders in our own experiences. We are the ones who understand what we need to make our communities safe because we know what we didn't have to end up in prison in the first place.

The first step in doing this is that we must restore voting rights to all people impacted by incarceration.

[Applause.]

Ms. VARGAS-EDMOND. And I will conclude with this. As a representative of an organization led by people directly impacted by incarceration who fight for policy change, I have witnessed many victories in decarceration policy in recent years. California is in the midst of a paradigm shift where our leaders are finally starting to realize that the punitive justice system and being tough on crime is not a cure for our social ills.

As we move forward toward ending mass incarceration, we must expand on existing reforms and fight for bold and courageous change that is rooted in solutions rather than just punishment. Ending mass incarceration will require that we address these root causes of harm, shift our culture to one that embraces transformation, and follow the lead of those directly impacted by the criminal legal system. Thank you.

[Applause.]

[The statement of Ms. Vargas-Edmond follows:]



**Testimony of Taina Vargas-Edmond**  
Founder & Executive Director  
Initiate Justice

**Before the United States House of Representatives**  
Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security

**Hearing on**  
California Criminal Justice Reform: Potential Lessons for the Nation

FAME Renaissance Center  
1968 West Adams Boulevard  
Los Angeles, California 90018

**July 13, 2019**

## Introduction

Good morning Chair and members of the subcommittee. My name is Taina Vargas-Edmond, Founder & Executive Director of Initiate Justice, an organization that works to end mass incarceration by activating the power of those who are directly impacted by it. We organize currently incarcerated people, formerly incarcerated people, and their loved ones to fight for policy change that brings people home from prison and keep our communities safe. Our leadership staff, board, and members are all directly impacted by incarceration, and our policy campaigns and strategy are informed by our more than 15,000 incarcerated members.

Over the last few years, Initiate Justice has been part of the broader reform movement in California that has succeeded in precipitously reducing our prison population and reducing recidivism rates. Thanks to various legislative reforms, the California state prison population has reduced from 167,832 in 2009 to 126,990 in 2019.<sup>1</sup> Similarly, recidivism rates have been steadily dropping, down from a three-year reconviction rate of 49.5% to 46.1% over the same time period.<sup>2</sup>

These reductions in incarceration can be attributed to three categories of policy reform: Realignment, retroactive sentencing reforms, and increased credit earning opportunities. Although other factors, such lower crime rates, also play a role in the decreasing prison population, I will focus my testimony on the impact that de-carceration policy reforms have had on initiating and end to mass incarceration in our state. I will also offer recommendations on how we can further this progress and move toward a more restorative accountability model that truly keeps our communities safe.

## Realignment

As a result of a federal lawsuit alleging that California's overcrowded prisons resulted in "cruel and unusual punishment", the state legislature passed AB 109 in 2011, which shifted the responsibility of housing thousands of people convicted of non-violent, non-serious, non-sexual offenses from the state prisons to the county jails. This policy, referred to as "Realignment", resulted in a 16.7% state prison population reduction in the year it was

<sup>1</sup> CDCR. "Spring 2019 Population Projections". <<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/06/Spring-2019-Population-Projections.pdf>> Retrieved 11 July 2019.

<sup>2</sup> CDCR. "CDCR Releases Back-to-Back Recidivism Reports". <<https://www.cdcr.ca.gov/news/2017/10/10/cdcr-releases-back-to-back-annual-recidivism-reports/>> Retrieved 11 July 2019.

implemented, and thousands of people who were transferred to the county jails were released early as a result of overcrowding or credit earning opportunities at the local level.<sup>3</sup> Although critics argued that realignment would result in an increase in crime, violent crime has precipitously decreased over that time period, and there have only been minor increases in certain property crimes that have not been adequately linked to AB 109.<sup>4</sup> Overall, Realignment forced the state and local jurisdictions to reduce its reliance on incarceration, increasing community supervision and diversion programs for many low-level offenses in order to keep the prison population down.<sup>5</sup>

### **Retroactive Sentencing Reforms**

Realignment on its own was not sufficient to reduce the prison population below the federal mandate. Several other policy reforms that were retroactive, meaning they reduced sentences for currently incarcerated people, were also necessary. While many policy changes played a role, I will highlight three of the more significant ones.

#### Proposition 47

In November 2014, voters approved Proposition 47, which reduced six felonies to misdemeanors and allowed for currently incarcerated people to petition the courts for resentencing and/or release. In the year following Prop 47's passage, 7,800 people were released from state prison (or made to serve their time in county jails), and almost 10,000 people in county jails were released.<sup>6</sup> The passage of Prop 47 is credited with the reduction of the prison population that ultimately brought the California Department of Corrections and Rehabilitation (CDCR) in compliance with the federal mandate.

#### Youth Offender Parole

The California Legislature has taken steps in recent years to acknowledge that age should be taken into consideration when determining the length of a person's incarceration. Legislative bills SB 260 (2013), SB 261 (2015), and AB 1308 (2017) offered early parole opportunities for people who were sentenced under the ages of 18, 23, and 26, respectively after serving a predetermined amount of time in prison. Additionally, SB 394 (2017) allowed people

<sup>3</sup> CDCR. "Spring 2019 Population Projections". <<https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/06/Spring-2019-Population-Projections.pdf>> Retrieved 11 July 2019.

<sup>4</sup> Public Policy Institute of California (September 2015). "Public Safety Realignment: Impacts So Far." <<https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/>> Retrieved 11 July 2019.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

sentenced to life without the possibility of parole (LWOP) under the age of 18 to be eligible for these Youth Offender parole hearings as well.

Youth Offender parole hearings are also conducted differently than general parole hearings – the person's age and cognitive development at the time of the offense must also be taken into consideration as the parole board makes its decision. This process has been overwhelmingly successful - people released under Youth Offender Parole have the lowest recidivism rate of any group. According to CDCR as of May 2019, people released under Youth Offender Parole had a 0% 1-year recidivism rate, a 0% 2-year recidivism rate, and a 2.2% 3-year recidivism rate for the year 2014-2015. The overall recidivism rate for the same time period was 46.1%.<sup>7</sup>

#### SB 1437

In 2018, legislation was passed to amend California's felony murder rule, meaning that people could no longer be charged with murder if they were not the actual killer or otherwise acted with the intent to kill.<sup>8</sup> The bill, SB 1437, was also implemented retroactively, meaning that people serving life sentences for murders they did not commit are able to apply for resentencing and release. District Attorneys in various counties across the state have challenged the constitutionality of the bill and have halted some releases pending California Supreme Court review; however, dozens of people have been released in the last seven months since the law took effect, and hundreds more are awaiting a hearing and anticipate release soon.

SB 1437 is significant because it is one of the first pieces of legislation to successfully see currently incarcerated people convicted of violent offenses – indeed, murder - have their sentences modified. Many previous reforms have focused on lesser offenses, which is important, but nowhere impactful enough to truly put an end to our over-incarceration crisis.

#### **Increased Credit-Earning Opportunities**

Proposition 57, approved by voters in November 2016, granted CDCR the "authority" to expand credit earning opportunities for currently incarcerated people beyond their existing scope. Accordingly, CDCR developed regulations pursuant to Prop 57 that expanded credit earning for good behavior, completion of educational and rehabilitative programs, and

<sup>7</sup> CDCR Office of Research. (Obtained by Public Records Act Request, 6 May 2019).

<sup>8</sup> Legislative Information, SB 1437. <

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180\\$SB1437](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180$SB1437)> Retrieved 11 July 2019.



participation in self-help groups, to name a few. These regulations indicated that credit earned “shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date...if sentenced to an indeterminate term with the possibility of parole”.<sup>9</sup>

The only incarcerated people excluded from these expanded credit-earning opportunities are those serving Life Without the Possibility of Parole (LWOP) or currently on Death Row – meaning that 96% of all people in the state prison system are now offered additional incentives to participate in educational and rehabilitative programming in exchange for earlier release. This represents an important policy shift from a punitive to a more restorative model, where people who have caused harm are offered opportunities to invest in their rehabilitation and transformation.

Of course, many implementation impediments still exist, such as lack of access to programs at certain facilities, lockdowns that impede programming, and failing to apply credits to the earliest possible release dates for those eligible for Youth Offender parole; however, thousands of incarcerated people have been able to reduce their sentences while being given the tools to help them reenter society successfully. This is a critical initial step in our paradigm shift.

## Recommendations

While the recent progress of prison reform policy in California has been promising, there are lessons we can learn as we consider future reforms that build on this success:

1. We must close prisons. Despite our decreasing prison population, the California corrections budget has continued to soar. This is in part due to increasing medical and mental health costs for incarcerated people, but mostly due to the fact that the prisons have continued to be in operation even as the population has decreased. More significant reductions will be necessary, and then facilities must be closed to eliminate their operating costs.
2. We must implement more inclusive reforms. Many proposed reforms target politically low-hanging fruit: people convicted of non-serious or non-violent offenses, or more egregious cases of extreme sentencing. In order to seriously and sustainably reduce our prison population, we must develop transformative solutions that offer hope of release and healing to those who have committed violent offenses.

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<sup>9</sup> Prop 57 - CA Courts - State of California. <<http://www.courts.ca.gov/documents/BTB24-5H-1.pdf>>

3. We must expand restorative justice practices. Our existing criminal justice system is punitive, rather than restorative, in nature. When people cause harm, they are punished without given true opportunities for redemption, healing, or transformation. Victims and survivors of harm are often left out of the process as well, and only included if their participation can promise harsher sentencing. We must expand restorative justice programs in local jurisdictions as an alternative to incarceration and make restorative justice a practice inside of prisons and jails themselves.
4. We must end sentence enhancements. Sentence enhancements are meant to act as a deterrent to prevent crimes from occurring; however, they have been grossly ineffective as the average person is not versed in criminal justice law well enough to understand the complexity of the potential consequences for their actions. California has hundreds of sentence enhancements in place (including the Three Strikes Law, gun and gang enhancements, or other enhancements for prior offenses) that result in egregious sentences that offer no public safety benefit.
5. We must ensure people impacted by incarceration are leading reform efforts. People directly impacted by incarceration are the experts of our own experiences, but we are often viewed as part of the problem and rarely included in proposing solutions. We have a direct understanding of what social conditions should change to prevent incarceration and have ideas on how to safely reduce the prison population. Most of us come from communities that are disproportionately impacted by social ills such as poverty, drug abuse, and violence; therefore, we understand what must change and can offer unique insight on how to change it. Therefore, the right to vote must be restored to all currently and formerly incarcerated individuals, and all proposed policy changes must be led by those directly harmed by mass incarceration.

## Conclusion

As a representative of an organization led by people directly impacted by incarceration who fight for policy change, I have witnessed many victories in de-carceration policy in recent years. California is in the midst of a paradigm shift where our leaders are beginning to recognize that social ills cannot be cured by punitive justice and being "tough on crime". As we move toward ending mass incarceration, we must expand on existing reforms and fight for bold, courageous change that is rooted in solutions to harm rather than punishment. Ending mass incarceration will require that we address root causes of harm, shift our culture to one that embraces transformation, and follow the lead of those directly impacted by the criminal legal system.

Ms. BASS. Thank you.  
Ms. Kubrin.

#### STATEMENT OF CHARIS E. KUBRIN

Ms. KUBRIN. Good morning and thank you for the opportunity to appear before you in these hearings. My name is Charis Kubrin. I am a professor of Criminology, Law and Society at the University of California-Irvine, and among other things I research the impact of criminal justice reform, prison downsizing in particular, on crime rates.

I first got interested in criminal justice reform back in 2011 when I moved from D.C. to California to start my job at U.C.-Irvine. It happened that realignment A.B. 109 had just been implemented. I knew absolutely nothing about realignment, but everywhere I turned I heard dire predictions of an impending crime wave, and I came to learn that despite these grave concerns there was no state funding set aside to evaluate realignment's impact, and that at that point no studies had yet been done, so there was no evidence to weigh in on the issue one way or another.

I decided to do something about it. My colleague, Dr. Carroll Seron, and I received funding from the National Science Foundation to hold a workshop at U.C.-Irvine bringing together leading scholars who researched prison downsizing throughout the country. The workshop addressed essential questions, including did realignment cause crime and recidivism rates to rise. Those who participated conducted original research. Those studies were peer reviewed and published in a special issue of the *Annals of the American Academy of Political and Social Science*, which Dr. Seron and I co-edited. Our volume represents the first scientific, systematic analysis of realignment's impact.

In the volume, Drs. Magnus Lofstrom and Steve Rafael conducted a study of statewide crime trends pre- and post-realignment. What they found was that realignment had no impact whatsoever on violent crime, and only a very modest impact on property crime, and that was only for the crime of auto theft. They concluded the criminogenic consequences of realignment have been modest.

Dr. Seron and I worked hard to disseminate these findings. We published an op-ed in the *Washington Post*, we held a briefing in Sacramento, we spoke with reporters, we met with law enforcement officials, and during our outreach something really interesting happened, which was that as we spoke about realignment and its impact, people wanted to know more about Prop. 47, the newest reform that had been implemented, and what its impact on crime rates were throughout the state.

Just like its predecessor, Prop. 47 became heavily politicized. I saw the same alarming headlines in the news, "Prop. 47 Causing a Crime Wave," for example, and the same situation with no funding set aside to evaluate it and no studies done at that time. One claim especially concerned me. Many people assumed that if crime rates went up following Prop. 47's implementation, that Prop. 47 was to blame for those rising crime rates. But crime rates going up, or down for that matter, tell us nothing about the causes of those crime trends, whether they be up or down, because crime is caused

by a constellation of factors, not just a single policy. A proper evaluation is necessary to evaluate any policy's causal impact.

This time I didn't wait for someone else to conduct the study. I did the research myself, along with my graduate student, Bradley Bartos. Our goal was simply to examine the impact of Prop. 47 on violent and property crimes statewide in the year following Prop. 47's enactment, so 2015. We wanted to study Prop. 47's impact on murder, rape, robbery, assault, burglary, larceny, and auto theft. So we did all of the UCR Part I crimes. And we utilized a research method that allowed us to construct a comparison unit that approximates California had it not enacted Prop. 47. We called this "Synthetic California."

Synthetic California is comprised of other states in the U.S. that looked a lot like California in their crime trends prior to Prop. 47 being implemented but that did not implement a Prop. 47-style intervention. What we were able to do in our study was compare crime in California in 2015 with crime in Synthetic California in 2015, and any difference between the two time trends can be seen as the causal impact of Prop. 47. So we really wanted to isolate the policy's impact.

So, what did we find? We found that Prop. 47 had absolutely no impact whatsoever on the crimes of homicide, rape, aggravated assault, robbery and burglary. We did find that Prop. 47 might have caused a slight uptick in larceny and motor vehicle theft, however. But before we could conclude that this was, in fact, the case, we needed to do what was called robustness checks on our data, and these are standard tests that are done in order to determine whether we might have issues of spuriousness in our study, like noise in our crime trends that could be accounting for these findings, and also to determine the extent to which our findings may be sensitive to our model specification; so if we created Synthetic California differently, would we find different results.

The robustness checks revealed that, in fact, the findings for both larceny and motor vehicle theft do not hold. So overall, we found very little evidence, almost no evidence, to suggest that Prop. 47 had an impact on violent or property crime in the state of California following its enactment.

These findings were published in the peer-reviewed journal *Criminology and Public Policy*, a leading journal in the field.

So, what is the larger takeaway from both of these studies?

Two things.

First, we can downsize our prisons without harming public safety. We absolutely can.

[Applause.]

Ms. KUBRIN. And secondly, that as other states throughout the nation debate prison downsizing and consider what reforms may work in their states, that California has to be front and center of that discussion.

Thank you.

[Applause.]

[The statement of Ms. Kubrin follows:]

Testimony of Charis E. Kubrin  
Professor of Criminology, Law & Society  
University of California, Irvine

Before the U.S. House Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on California Criminal Justice Reform: Potential Lessons for the Nation in California

July 13, 2019

### **Introduction**

Thank you for the opportunity to appear before you in these hearings on California Criminal Justice Reform. My name is Charis Kubrin. I am a Professor in the Department of Criminology, Law & Society at the University of California, Irvine. Among other topics, I research the impact of criminal justice reform—prison downsizing in particular—on crime rates.

### **AB 109 Realignment**

I first got interested in criminal justice reform in 2011, when I moved from Washington DC to California to start my job at the University of California, Irvine. It happened that AB109 (Realignment) had just been implemented. AB 109 realigned from state to local (county) jurisdictions certain responsibilities for lower-level nonviolent offenders and parolees. Counties were given discretion regarding how they chose to spend their Realignment dollars, be it on jail space, community supervision, or electronic monitoring. Each county drafted a unique Realignment plan.

I had no idea what Realignment was but everywhere I turned I heard dire predictions of an impending crime wave. I came to learn that despite these grave concerns, there was no state funding set aside to evaluate the impact of Realignment and to my knowledge, no studies had yet been conducted so we did not have evidence on Realignment's impact one way or another. I decided to do something about it.

My colleague Carroll Seron and I received funding from the National Science Foundation and the UC Office of the President to hold a 2-day workshop at UC Irvine where we invited leading scholars who research prison downsizing to analyze Realignment's impact statewide. The workshop was organized around various themes and within these themes, researchers addressed essential questions including: Did Realignment cause crime and recidivism rates to rise?

Those who participated conducted original research. The studies were peer-reviewed and published in a special issue of the *Annals of the American Academy of Political and Social Science* (Kubrin and Seron 2016) titled, "The Great Experiment: Realigning Criminal Justice in California and Beyond," which Carroll Seron and I co-edited. Our volume represents the first systematic, scientific analysis of Realignment and its impact.

While the volume contained many important findings, I want to review those related to crime, given the panel's focus. Drs. Magnus Lofstrom and Steve Raphael conducted a study of statewide crime trends pre- and post-Realignment (Lofstrom and Raphael 2016). They found that Realignment had no impact on violent crime and only a very modest impact on property crime, and only for crime of auto-theft (see accompanying paper). Lofstrom and Raphael (2016) also conducted a cost benefit analysis. They found that 1 year served in prison instead of at-large as a result of Realignment prevents 1.2 auto-thefts a year and saves roughly \$12,000 in crime-related costs, as well as harm to victims and their families. On other hand, keeping an individual behind bars for a year costs California nearly \$52,000 (in 2013 dollars). They

ultimately conclude that, at the statewide level, the prison-crime effects are small and that the criminogenic consequences of Realignment have been modest.

We worked hard to disseminate these findings. We published an op-ed in the *Washington Post*, held a briefing in Sacramento, spoke with numerous reporters, and met with various law enforcement officials.

#### **Prop 47**

During the outreach on Realignment, something interesting happened. As we spoke about Realignment people also expressed interest in Prop 47—another criminal justice reform—and its impact on crime statewide. Prop 47, implemented in November 2014, reduced certain drug possession felonies to misdemeanors and required misdemeanor sentencing for various crimes including shoplifting (where the value of the stolen property does not exceed \$950), grand theft (where the value of the stolen property does not exceed \$950), receiving stolen property (where the value of the stolen property does not exceed \$950), forgery (where the value of the forged check, bond, or bill does not exceed \$950), fraud (where the value of the fraudulent check, draft, or order does not exceed \$950), and writing a bad check (where the value of the check does not exceed \$950).

Just like its predecessor Realignment, Prop 47 quickly became politicized. I witnessed the same claims being made (e.g., Prop 47 led to an increase in crime), the same alarming headlines (with phrases such as “crime explosion,” “crime wave,” “spike in crime”), and the same situation with no state funding set aside to evaluate Prop 47’s impact so no proper evaluation had yet been conducted. One claim, in particular, concerned me. Many assumed that if crime rates rose following Prop 47’s enactment, that this was evidence that Prop 47 *caused* those rising crime rates. However, crime rates going up (or down for that matter) tells us nothing about the causes behind those rises (or drops) as crime is caused by a constellation of factors, not just a single policy. A proper evaluation study is necessary to isolate Prop 47’s causal impact.

This time I didn’t wait for someone else to do the evaluation. I did the research myself along with my graduate student Bradley Bartos, who specializes in policy evaluation research and has co-authored a leading text on cutting-edge research methods for causal inference and analysis (McCleary, McDowall and Bartos 2017). Our goal was to examine the impact of Prop 47 on crime in the year following its implementation (2015). In particular, we wanted to identify Prop 47’s causal effect on violent (murder, rape, robbery, assault) and property (burglary, larceny, auto-theft) crime statewide. Toward that end, we created a state-level panel dataset containing UCR Part I offenses from 1970-2015.

In an ideal world, we would use an experimental method to determine Prop 47’s impact on crime. In particular, we would randomly assign some states to have Prop 47 and others not to have Prop 47 and then we would see what happens to crime in the “treated” vs. “control” groups. Clearly, random assignment is impossible and unethical in this case. The next best thing is a quasi-experimental design, which has all the benefits of the experimental method minus random assignment. The particular quasi-experimental method we use in our study is called

Synthetic Control Group Design. This method allows us to construct a comparison unit that approximates California had it not enacted Prop 47; we call this comparison unit “Synthetic California.” We can compare crime in California in 2015 to crime in “Synthetic California” in 2015 to determine Prop 47’s causal impact. Any causal effect of Prop 47 will be reflected in the distance between the two time series that emerges following the intervention.

Confidence in our findings is predicated on the quality of our comparison unit—that is, how we constructed Synthetic California. So, how did we construct Synthetic California? Synthetic California is comprised of a weighted combination of donor pool states (other states in the U.S.) that optimally fits California’s crime trends from 1970-2014, the pre-intervention period (N=44 years). Donor pool states are those states which did not experience a Prop 47 style intervention. Because no other state enacted a Prop 47 style intervention, all remaining states in the U.S. were eligible. We created a “Synthetic California” for each crime type in the analysis. To reiterate, when a gap emerges between California and its synthetic counterpart following the enactment of Prop 47, the difference between the two time series can be interpreted as the causal effect of Prop 47 on crime.

What did our analysis reveal? For homicide, rape, aggravated assault, and robbery we find no evidence that the impact of Prop 47 was any different from zero. That is, Prop 47 had no effect on these offenses. The same is true for burglary. However, for larceny and motor vehicle theft, Prop 47 did appear to have an impact on these offenses (see Figure 1 in Bartos and Kubrin 2018 for a visual illustration of these findings).

Before we can conclude that this was, in fact, the case it is necessary to perform standard “robustness checks” on the findings. These tests are done in order to address questions of spuriousness (e.g., could the findings be due simply to noise in the time trends of crime?) and to determine the extent to which the findings for larceny and motor vehicle theft may be sensitive to model specification (e.g., the findings shouldn’t change simply by changing what Synthetic California looks like).

The first standard test we conducted is called an Insample placebo test. This test determines whether the findings for larceny and motor vehicle theft are sufficiently meaningful by asking: Are these findings for California large relative to other states? Stated alternatively, pretending we do not know which state enacted Prop 47, we construct synthetic control groups for every other state and estimate the effect of Prop 47 on crime in 2015. Since California is the only state that, in fact, enacted Prop 47, it should produce a larger effect (i.e., finding) than any other state if the effect is real and meaningful. To conduct this test, we iteratively reassigned the treatment condition (Prop 47) to each state in our sample and constructed a synthetic control group for that state. We then ranked the states based on how large their Prop 47 effects were, with 1 being the largest. We did this for larceny and motor vehicle theft only since we did not observe any effect for the other crimes.

Figure 2 in Bartos and Kubrin (2018) shows the rankings for all states. Looking first at motor vehicle theft (Panel B), we see that California did not rank sufficiently highly for this



crime (13<sup>th</sup>/50), suggesting that the estimated effect for motor vehicle theft appears smaller in California than the random variation observed in the donor pool states. Thus, Prop 47's estimated effect on motor vehicle theft in California is likely spurious. This finding drops out. However, larceny is ranked 4<sup>th</sup>/50 (Panel A) suggesting that the estimated larceny increase following Prop 47 that we identified is not trivially small relative to changes in larceny observed in non-Prop 47 states. Thus, the larceny finding remains, at least for now.

The second standard post estimation test required is called the Leave One Out Test. This test evaluates whether our only remaining finding—larceny—is sensitive to changes in Synthetic California's composition. We conduct this test by iteratively excluding donor pool units contributing the largest weight to Synthetic California until all original states with non-zero weights are excluded (for larceny this includes the states of NY, MI, NV, NJ). In other words, the weights for these states get redistributed to remaining donor states to produce the next best Synthetic California. At the end of the process, Synthetic California is comprised of a different set of donor pool units than it was in the original model. If the original effect for larceny persists in sign and magnitude even after this change, we can be confident that the finding for larceny is meaningful and robust (i.e., not sensitive to changes in Synthetic California's composition).

Figure 3 in Bartos and Kubrin (2018) reveals that, when key donor pool states are excluded, Synthetic California drastically changes and the interpretation of the gap no longer holds. Thus, larceny, our only non-zero, non-trivial effect, appears to be dependent upon which states comprise Synthetic California. We therefore conclude that the finding for larceny must be interpreted with caution.

In sum, the robustness checks reveal the findings for both larceny and motor vehicle theft do not hold. These findings are both sensitive to alternative specifications of our synthetic control group and small enough that placebo testing cannot rule out spuriousness. Overall, then, we find next to no evidence to suggest that Prop 47 caused crime to increase in California.

These findings were recently published in the peer-reviewed journal *Criminology & Public Policy* (Bartos and Kubrin 2018), a leading crime and policy journal in the field (see accompanying paper). To my knowledge, no other study on Prop 47's impact has been published in a peer-reviewed journal.

### **Conclusion**

What is the larger take-away from both of these studies? We can downsize our prisons without risking public safety.

The findings from these studies have implications well beyond Realignment and Prop 47, and California. The steps taken by the state to reform its criminal justice system are being closely watched by other states also confronting similar fiscal and legal challenges related to overcrowding. These states are asking whether the large-scale prison downsizing in California will compromise public safety or whether they can look to reforms such as Realignment and

Prop 47 as possible solutions to replicate in their own states. Although speculation abounds, rigorous, high-quality scientific research is necessary to answer this question. Although additional studies are welcome, the findings thus far suggest that these reforms are not associated with meaningful increases in crime. As the nation debates prison downsizing, clearly the experience of California must be front and center.

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Ms. BASS. Well, I want to thank our witnesses.

We will now proceed under the 5-minute rule with questions.

I would like to ask unanimous consent of my colleagues to allow our three members who are here who are not on the committee to participate in Q&A. Thank you.

And I would also like to ask unanimous consent—I want to enter a document in from the Women Organizing Reentry Communities of Color.

[The information follows:]

**CHAIR BASS FOR THE OFFICIAL RECORD**

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**Congressional Hearing: “California Criminal Justice Reform: Potential Lessons for the Nation”**

**Talking Points**

**Women Organizing Reentry Communities of Color - Prop 47**

The following observations represent the efforts of the **Women Organizing Reentry Communities of Color - Prop 47 Network** regarding California’s implementation of The Safe Neighborhoods and Schools Act (Prop 47), and its impact on re-entry efforts of formerly incarcerated women of color.

**(If possible, ask the women to stand)**

Read:

- **Women Organizing Re-entry Communities of Color – Prop 47 (WORCC-Prop 47) Network** unites **Justice Now, A New Way of Life, and Time for Change Foundation** to ensure that Prop 47 resources account for the needs of women of color returning to their families and communities.
- Passed in November 2014 CA voters passed Prop 47 changing six low-level offenses from felonies to misdemeanors.
- Prop 47 saves the state millions of dollars in reduced incarceration. To-date, those savings amount to approximately \$199 million.
- Despite the historic nature and momentum generated by Prop 47, the promise of this important policy falls short for women of color struggling to reunite their families after incarceration
- As primary custodians of our families, we require multiple pathways to generate income and achieve financial stability that considers the unique conditions of women inside and outside of incarceration including trauma and stigma

**We would like to share lessons for the Nation’s policymakers to consider.**

- **First, include gender at the onset of policy development.**  
Seek input and perspectives of women with lived experiences to produce and implement policies that are gender-responsive

- **Target resources for women of color to access employment and other streams of income.**

Creating access to financial stability is a key factor to build resilience, prevent recidivism, and prevent youth from the prison pipeline.

- **Build data systems and collection into policies to promote transparency and accountability and inform decision-making and use of resources.**

When women of color are not counted, they become invisible.

Thank you and we hope that our findings about the gaps and opportunities to improve the implementation of Prop 47 in California will help to inform your thinking about the importance of gender in justice reform efforts nationally.

Ms. BASS. I am beginning the Q&A by recognizing myself for 5 minutes.

So, the Women Organizing Reentry Communities of Color have made a few recommendations. One, they want to make sure that we include gender at the onset of policy development; that we target resources for women of color to access employment and other streams of income; that we build data systems and collection into policies to promote transparency. And I would like to ask if the Women Organizing Reentry Communities of Color, if you are here, if you could stand so that we could acknowledge you.

[Applause.]

Ms. BASS. Thank you. Thank you. Thank you very much for your input.

You know, those of us from California and the two of us here on the panel, Representative Lieu and I, are familiar with the propositions. But I wanted to know, Mr. Romano, if you could please restate what were the significant aspects of Proposition 47.

Mr. ROMANO. So, Proposition 47, which was enacted in 2014, took six common street-level crimes—we are talking petty theft, shoplifting, forgery, drug possession—and made those crimes mandatory misdemeanors rather than possible felonies. It made those changes both prospectively and retroactively, I think which we all have discussed is an important aspect, meaning that future offenders could not receive felonies for those crimes. But also, if you are in prison serving a sentence for those crimes, and those crimes could amount to life sentences under the Three Strikes law, then you had an opportunity to get out.

Proposition 47 also created a fund from the state savings, from a reduced prison population, and distributed that money to K–12 education and reentry programs throughout the state.

Ms. BASS. Ms. Kubrin, I know you were talking about Proposition 47, but could you please state for the record what was Proposition 36?

Ms. KUBRIN. So, I have not done research on Proposition 36.

Ms. BASS. No, I know.

Ms. KUBRIN. So I would defer to my colleagues, who could probably say more about that.

Ms. BASS. Okay. Ms. Vargas-Edmond.

Ms. VARGAS-EDMOND. I would defer to Mr. Romano.

Ms. BASS. Okay, all right. You get it again.

Mr. ROMANO. Proposition 36 was enacted in 2012. It reformed California's Three Strikes law to require that a third strike be a serious or violent felony. In other words, you couldn't get a life sentence for a non-serious, non-violent crime. It limited life sentences for shoplifting a pair of socks—that is not an exaggeration—stealing a dollar in change from a parked car. And like 47, it operated prospectively, meaning nobody could get a life sentence for these minor crimes in the future, but also retroactively. So if you were serving a life sentence for an extraordinarily minor crime, you could get out of prison as well.

Ms. BASS. How about explaining what realignment is, Ms. Kubrin?

Ms. KUBRIN. Sure. So, 8109 realignment was implemented in 2011. It took what we called the triple nons, the non-serious, non-



sex, non-violent offenders, so very low-level individuals, and transferred them from state-level prisons down to the county level. Counties were given discretion and funding in which they could figure out what they wanted to do with these low-level offenders. They could put them in jails, they could do electronic monitoring, community supervision. Basically, each county had to come up with a realignment plan on how it was going to use its realignment dollars. The idea was that this was something that could be handled better locally, local solutions to issues, and also that this would save the state a lot of money because instead of having individuals in the state prisons at the tune of around \$55,000 back then, that this would create a lot of savings for the state as well.

Ms. BASS. Thank you.

Ms. Vargas-Edmond, you mentioned about how the state prison budget is still increasing in dollars, but has there been any increase in programming? Meaning education, training, et cetera.

Ms. VARGAS-EDMOND. To technically answer your question, there has been an increase in funding for programming, but there have been many issues in terms of implementing and expanding access to programming inside of prisons. There are various reasons for that. One, most of the prisons in California are rural. They are in places where community members who have to come in and offer their volunteer time to implement programs, it is difficult for volunteers to come. Two, there are security concerns. The way CDCR operates is as if the prison is in security lockdown. People are not allowed to move. I see that we are out of time, but there are various issues—

Ms. BASS. Well, in the last few seconds, it took community organizing and activism to really bring about these reforms. Could you speak a minute about that?

Ms. VARGAS-EDMOND. Yes. So, community members, particularly people who are directly impacted by incarceration, recognize the importance of programming, and Proposition 57 was put on the ballot largely by the volunteer efforts of people who have incarcerated loved ones and folks who are formerly incarcerated, mostly because folks recognize that they want the opportunities to be able to come home and were willing to work and invest in their own rehabilitation in order to do so.

Ms. BASS. Thank you. Let me also just mention that for Three Strikes to change, there was an organization, Families Against Three Strikes, that worked for a couple of decades to reform the Three Strikes law.

Let me call on Representative Hank Johnson for your 5 minutes.

Mr. JOHNSON of Georgia. Thank you, Madam Chair. I appreciate you hosting us out here in Los Angeles for this very important topic. I am just heartened to see how many people in the community care enough about this subject to come out on a Saturday morning.

[Applause.]

Mr. JOHNSON of Georgia. I will note the vast array of ethnicities out there in the crowd. It is really heartening for me coming from Georgia, where we almost elected Stacey Abrams for governor, I might add.

[Applause.]

Ms. BASS. You did elect Stacey Abrams. She just wasn't allowed to take office.

Mr. JOHNSON of Georgia. That is right. We still have election death going on around here.

But at any rate, what percentage of the petitions under Proposition 47, which was retroactive and which enabled persons who were currently serving sentences to petition the judge for release, what percentage of those petitions are granted and denied, or have been granted and denied, granted or denied?

Mr. ROMANO. So both under Proposition 36 and 47, the vast majority have been granted. I am talking over 95 percent of people who are eligible have been released. I will say, however, that litigation is ongoing for both initiatives, especially here in Los Angeles, where prosecutors are opposing the release of these folks.

Mr. JOHNSON of Georgia. Have prosecutors, the prosecuting counsel of California, I guess, have they opposed any of these propositions before they passed? And has their stance against the propositions, if there was opposition, changed since implementation?

Mr. ROMANO. So, the California District Attorney's Association has opposed almost all of these reforms. Proposition 36 was supported by the Republican District Attorney of Los Angeles, Steve Cooley, at the time, and the current District Attorney, Jackie Lacey. They are outliers, and very few DAs have recognized the effectiveness of these reforms.

Mr. JOHNSON of Georgia. What have been the human, societal, and/or financial costs associated with over-incarceration? And anyone can respond.

Ms. VARGAS-EDMOND. I could be here all day talking about the human costs of mass incarceration. Maybe I will share a little bit about my story of being a woman impacted by incarceration.

My husband, at the age of 19, was facing 150 years to double life for an offense in which no one was hurt. He ended up being sentenced to 10 years and pled out to things that he did not do because of the ways the District Attorneys have the ability to stack charges.

Because of Proposition 57, he was able to earn almost two years off of his sentence, and that is the reason that he is here now.

[Applause.]

Ms. VARGAS-EDMOND. But the seven years that he spent incarcerated cost me about \$40,000 out of my pocket to be able to make visits, to be able to put money on the phone so I could talk to him, to send packages, and that doesn't even include the cost that we spent on an attorney trying to fight his case. There are too many stories that are exactly like mine where women of color in particular bear the financial burden and the emotional burden and the social stigma of having incarcerated loved ones.

[Applause.]

Ms. VARGAS-EDMOND. So I think it is really important to take into consideration the human cost on not only the people who are incarcerated but their family members and their communities who bear the brunt of that burden as well.

Mr. JOHNSON of Georgia. Children involved?

Ms. VARGAS-EDMOND. Children.

Ms. KUBRIN. Can I just add, as a sociologist and someone trained in sociology, mass incarceration reproduces inequality in our society. It reproduces and deepens inequality in all aspects, whether we are talking about education, family, the labor market. Prison can be a stratifying institution. And so if we want to fight back against inequality, racial inequality in particular, we cannot have the kinds of incarceration rates that we have had in this country. [Applause.]

Mr. JOHNSON of Georgia. Even with Propositions 36, 47, and 57, and the legislation that you referred to, Professor Kubrin, does California still have an over-incarceration problem?

Ms. KUBRIN. Absolutely.

Mr. ROMANO. Yes. We are currently at about 137 percent of the design capacity of the prison system. We are under a Federal court order that has ruled that the conditions in California prisons are so bad that they amount to cruel and unusual punishment. This was a decision that was originally made in 1995, and we are still under that decision. It was affirmed by the Supreme Court in 2011. We are still under that order. So the answer is yes.

Mr. JOHNSON of Georgia. Thank you.

Ms. BASS. Representative Lieu.

Mr. LIEU. Thank you. Let me first thank Congresswoman Karen Bass and my colleagues for being here at this important hearing, for all of you for being here.

When I was in the California state legislature, I had the honor of working with then-Speaker Bass on her leadership team on criminal justice reform, and it is such a thrill to now be in Congress and work with Karen Bass on criminal justice reform.

[Applause.]

Mr. LIEU. I have had a chance to visit both Federal and state prisons, and two things became clear to me. One is, regardless of what we think, we can all agree on this one point, which is people in prison have a lot of time, and it seems totally ludicrous to me that we don't provide better opportunities for them to spend that time getting an education or earning a skill, or learning a trade/craft.

[Applause.]

Mr. LIEU. The second thing that became clear is that with any large population, there is a large, diverse array of interests, and some folks might love a plumbing course and want to be a plumber. Some folks might never ever want to go near that area.

So my first question is to Ms. Vargas-Edmond. You said the California Department of Corrections has a lot of discretion in implementing these rehabilitation credits. Do you believe they have enough array of programs for the diversity of interests that prisoners have in getting these credits?

Ms. VARGAS-EDMOND. No. The short answer, no. However, a positive aspect that came from Proposition 57 is that for the first time incarcerated people were allowed to earn time off of their sentence for participation in what are referred to as ILTAGs, inmate leisure time activity groups, which are peer-led groups, which are determined based on the need and the interest of currently incarcerated people. So that is certainly a step in the right direction.

But in terms of job or vocational training or rehabilitative programming that might address folks' cognitive or behavioral needs, I think a significant issue that we have is that currently incarcerated people don't have a say in which programs are implemented. What we have done with Initiate Justice is we have conducted surveys of currently incarcerated people to ask what programs they think should be available and have been able to analyze some of those results and put forward recommendations when we advocate both through the legislature and through the administrative process through CDCR. I can't say that we have necessarily won any of those victories because it is a huge uphill battle, but I would recommend that the state legislature and CDCR actually ask folks who are impacted what they need to be successful.

Mr. LIEU. Thank you.

[Applause.]

Mr. LIEU. There is one specific area that I worked on. It is arts in corrections, and for some prisoners going through programs related to art or through acting seems to have a transformative effect on them. I have worked with groups such as Actors Gang, and they go in and they teach prisoners basically how to act. To me it is really sort of an emotional management course cloaked as acting, but it seems quite transformative. I have tried to get it in Federal prisons.

Do they get credits for that, do you know, in the Department of Corrections, for arts in corrections programs?

Ms. VARGAS-EDMOND. Well, they could if the program was registered as an official inmate leisure time activity group. However, the threshold for that is pretty high. They are only able to earn 40 days off per year for 208 hours of program completion.

Mr. LIEU. Thank you.

Mr. Romano, Professor Romano, a question for you about Proposition 36. Based on the research I read, people who are released because of that have an extremely low recidivism rate, on the order of 1.7 percent. Is that correct?

Mr. ROMANO. In the first year of their release, yes.

Mr. LIEU. Okay. How about in the outer years?

Mr. ROMANO. In the outer years they are still vastly outperforming all other people being released from prison.

Mr. LIEU. What is the statewide recidivism rate in general?

Mr. ROMANO. Well, recidivism is a tricky word, but we can use returns to prison or new convictions. I think new convictions is probably the fairest and best measure. The statewide new conviction rate is about 50 percent, just under 50 percent.

Mr. LIEU. So why is there such a huge disparity between people released under Proposition 36 and the statewide recidivism rate?

Mr. ROMANO. I should say the 50 percent recidivism rate is over three years, and I wish I knew the answer to that. Honestly, the recidivism rate for folks released on 36 has been better than our wildest expectations. We are very happy with the results.

[Applause.]

Mr. ROMANO. We have worked hard to ensure success for as many people as possible. Folks are older, but we are still outperforming old inmates who are being released. So there are a lot of reasons that go into it, and I wish I knew the answer.

Mr. LIEU. Thank you.

So let me just conclude with this. I want to thank all of you here for fighting for criminal justice reform. Many times, things in politics seem impossible until it happens. So if 10 years ago I were to tell you, hey, in 10 years we will be smoking weed in multiple states, you would think I was crazy. [Laughter.]

That is what is happening now. [Laughter.]

And with that, I yield back.

[Applause.]

Ms. BASS. On that note, Representative Butterfield. [Laughter.]

Mr. BUTTERFIELD. What a time to jump in. [Laughter.]

Let me just begin by thanking the three witnesses for your testimony this morning. It was a very profound presentation and I want to thank you so very much.

As Ms. Bass said at the outset of this proceeding, this is not a political rally. This is not a town hall meeting. This is an official congressional hearing, and so the remarks that you will make today will go into the Congressional Record and will be a guide for us as we legislate in the years to come.

I am Congressman G.K. Butterfield. I represent a very low-income minority district in eastern North Carolina. I have been in Congress now for 15 years, serving as Chief Deputy Whip of the House Democratic Caucus.

What has not been made abundantly clear here this morning is that Congressman Karen Bass is a very busy congresswoman. We all know what her car looks like. It is a black Toyota with California tags on it. We see that car all over Washington, D.C., morning, noon, and night. She represents you, and she represents you well.

[Applause.]

Mr. BUTTERFIELD. You all are cutting into my time now. You are cutting into my time, but I have got to give credit where credit is due. I am not one that just heaps a whole lot of praise on people just for the sake of doing it, but your congresswoman is a dynamic leader. Not only does she serve as the Chair of the Subcommittee on Crime and Terrorism and Homeland Security, she is also the Chairwoman of the Congressional Black Caucus, 55 members of us from all across the country. She was unanimously elected as chair of our caucus, and we are so very proud of her. Keep your applause down. She also serves on Foreign Affairs Committee, where she leads the effort on Africa and world hunger and domestic poverty and all of the others.

[Applause.]

Mr. BUTTERFIELD. And so I want to just thank her publicly for her leadership.

I also want to thank my friend Ted Lieu. Ted Lieu is a very active member of Congress. He is also in the Democratic leadership, serves as the co-chair of our Democratic Policy Communications Component. We call it the DPCC. He is very active. He is on the Judiciary Committee and serves you well.

[Applause.]

Mr. BUTTERFIELD. So I am delighted to be here today. There are 240 Democratic members of the House of Representatives out of 435, which means that we are the majority party.

[Applause.]

Mr. BUTTERFIELD. We get enormous criticism all across the country because we don't tell our story well enough. And so this trip here to Los Angeles this morning is an opportunity for us to tell our story, to let you know what we are doing, to listen to you and to collect information, collect evidence so that we can go back and do more. And so I want to thank you so very much for coming.

In my prior life I served as a judge, spent 15 years in the judiciary in North Carolina, 13 of those on the trial bench, where I sentenced literally thousands of individuals over the 15-year period. I served on our state supreme court for two years. And so I have a vested interest in what we are talking about today. For 15 years I sat in the front row watching justice and the miscarriage of justice take place right in front of me. And so, although I am not on the Judiciary Committee, I have a profound interest in this subject.

Let me conclude by talking about my favorite subject in criminal justice reform, and it has to do with record expungement.

[Applause.]

Mr. BUTTERFIELD. Let us remember that 90 percent of those who are incarcerated are in state prisons, 10 percent are in Federal prisons. What that also means is that we as a Congress do not have what is called jurisdiction over state issues. We cannot direct the states with respect to their criminal justice system. We don't have that power. We have the power of the purse. We can withhold funding to states for various programs, but we cannot direct states as to how to conduct their program.

And so what I saw when I was a judge is that police at the time of arrest have a tendency to overcharge, charge for offenses which the defendant did not commit, only just a hint that they may have been involved in it. So what that means is that the overcharging is done so that when the case goes to court, there is room to plea bargain, there is room for negotiation. And so if the young offender is charged with 12 offenses, when the case goes to court, the prosecutor may offer a plea deal for two offenses, which means that the 10 offenses would be dismissed. That sounds good, but it continues to be on the defendant's record for the rest of her life. It is a problem. And so when she is released from prison or terminates her probation, goes for a job, they look at the criminal record, Oh, you cannot work here because you were charged with first-degree burglary. And when the defendant says but that was dismissed, that does not matter to the employer.

So please pay attention in California to the need for a strong expungement law so that cases that were dismissed and cases in which the defendant was found not guilty can be expunged from their criminal record.

Thank you so very much.

[Applause.]

Ms. BASS. Representative Evans.

Mr. EVANS. Thank you very much.

I too want to thank our chairperson in a lot of different ways. Obviously, as chair of this subcommittee, I am really honored to be here, and as chair of the Congressional Black Caucus.

But I want to probe something that was said, and I would like for you to elaborate on it. Front and center, you said something

that I believe. As goes California, so goes the rest of the nation. And I think that what you said—I don't want to put words in your mouth, but I want you to expound on it, the importance of it, because in Pennsylvania, I have been around long enough to tell you that Pennsylvania went from 5,000 people in prison to 55,000 people in prison, and that Pennsylvania has 12 million people in the state, and the fact is that Pennsylvania is a rural state. Obviously, prison production has basically been economic development in rural areas. So we don't need to forget the fact of the economics around that.

But I want you to probe, Professor, on that front-and-center statement, because people really need to understand that. Can you speak on that?

Ms. KUBRIN. Thank you. Yes. I mean, I absolutely agree, California has led the way in many ways. At the same time, what California has done has been quite modest. I think the term "low-hanging fruit" was used, which is that we have identified the least serious offenders, the low-level, non-violent, non-serious, non-sex offenders.

The big question to me, first of all, other states should be looking at California to replicate that, considering what may work in their state. But the next step is what is next. How do we continue on the path of reform in order to get where we should have been before the buildup started, and that's going to take some real digging, I think, to move beyond simply identifying the lowest level non-violent, non-serious, non-sex offenders.

In some ways I was not surprised by the findings of these studies because it is the low-hanging fruit that we are talking about here, people who have committed such minor offenses and would do better to have rehabilitation and other kinds of reentry responses rather than harsh punishment. The big question I think in California and other states as well is where do we go from here, what is next. California is a great first start. It should be modeled in many ways, but the next big question remains.

Mr. EVANS. And I want to piggyback on as a result of what you have just said. In Pennsylvania, the governor there did shut down a few prisons, and in addition to that we passed a law on earned time, and we passed the law in Pennsylvania relating to closing cases so that wouldn't be on their record.

So I am saying that you, as our chairperson here, this is all being watched. I don't want you to just think you can look at this from the perspective of California and Los Angeles, but you need to understand there are other states watching and listening. So you could not at a better time, the person who is the chairperson of this subcommittee for the role that she plays, along with Congressman Lieu and Congressman Johnson, my good friend, Congressman Butterfield said. But also Congressman Lieu must be the best tweeter in the House of Representatives. [Laughter.]

He gives out lessons on that. Social media is also extremely significant because you need to use every method in your toolbox in terms of communicating.

So this hearing, in my view, reinforces this discussion, and that piece you said front and center, because states are laboratories of

democracy. It is not the national government. It really is driven from you, and then we react to what takes place.

I was in the legislature for 36 years, and I was the chairman of the Appropriations Committee, so there is a direct connection to cost implications, which I think is why you suddenly see Republicans, not because of moral outrage, in my view, but because of the cost implications that it is driving on the national level in each state budget. So just understand the dollars are also driving the decision-making of what is occurring here. I just want to add that, and I yield back the balance of my time.

Ms. BASS. Representative Horsford.

Mr. HORSFORD. Thank you, Madam Chair. I too want to commend you.

The vision of your congresswoman to bring these congressional hearings is very significant, as has been stated, and this is one in a series of congressional hearings across the country that is being led by Congresswoman Bass as the chair of the Congressional Black Caucus so that we can hear directly from the community, the experts, those who are impacted by the policies that we are setting.

And so I want to commend you again, Congresswoman, and thank you for inviting me to participate.

I was looking up just quickly some information, and California spends about \$75,000 a year to incarcerate a prisoner. And yet, it spends about \$10,000, \$291 per child to educate. And so I want to ask the witnesses what specifically, Ms. Edmond, what investments could be made on the front end to help strengthen our communities by supporting our programs around children, around families—  
[Applause.]

Mr. HORSFORD [continuing]. That would help stem the incidents that lead people to crime to begin with.

Ms. VARGAS-EDMOND. Thank you very much for that question. I think a topic that is often left unaddressed in these policy reform conversations is root causes, so thank you very much for that.

First and foremost, I think that we should directly be asking people who are impacted what services could have been in place to prevent you from committing what it was that you committed. I think that what we would find are things that we know a little bit already, what causes violence. We have an incredibly violent culture. We have a history of racism. We have poverty. We have issues of unaddressed mental illness and substance abuse. So those are some areas where we can start.

I think most folks in our communities are aware of the fact that if you are experiencing a mental health crisis, you do not have access to resources or social workers, and what folks will often say is, well, we have to wait for them to commit a crime and then we can call the police.

I am glad that you raised the amount that we spend on education. I think what we are seeing is that we get what we pay for, so I believe that we need to dramatically increase what we are spending on social services, ensuring that children who are in crisis are getting the care that they need, that everybody has access to therapy to work through the trauma that they have that may cause them to cause harm in the first place. And if folks do end up being



incarcerated, making sure that we are seriously and significantly investing in their own healing and transformation and reentry.

Mr. HORSFORD. Thank you.

[Applause.]

Mr. HORSFORD. I want to ask the witnesses to discuss the juvenile offender piece of this. You have described the California legislature's steps in recent years acknowledging that age should be taken into consideration when determining the length of a person's incarceration. So what things should we consider as Federal legislators in approaching or reforming some of our practices around juveniles?

Ms. VARGAS-EDMOND. I would recommend looking at the science. There is a lot of evidence to show how cognitive development is different for different folks, so looking at what the different cognitive needs are for people who are below a certain age and coming up with appropriate responses based on what the cognitive development is for the person at that age. And then just to reiterate the point that I made previously is to increase access to programs and services so that folks who are young have access to maybe more non-punitive interventions.

I think most young folks make mistakes. Some are illegal, some are not. Some people get caught, some people don't, and a lot of that has to do with your income and your skin color. So taking into consideration what we can do to target specifically vulnerable young people and make sure that they get care and not just punishment.

[Applause.]

Mr. HORSFORD. And finally, Mr. Romano, real quickly on the recidivism rate, you said about 50 percent. How much of that is for technical violations, and how is that being addressed in any of your policies?

Mr. ROMANO. Those are for new crimes. So those are actual convictions.

Mr. HORSFORD. But my understanding, though, is if you technically violate off of a minor offense, you could end up back in prison.

Mr. ROMANO. Actually, in California, one of the first reforms that California achieved was to reduce, if not fully eliminate, returning people back to prisons for technical rule violations. So both for parole, which is run by the state, and probation, California dramatically reduced the number of people who are going back to prison for technical violations of their release rather than committing new crimes. That was one of the first and most successful reforms here.

Mr. HORSFORD. Can I get the information on what that is? Because we need to bring that to Nevada.

Mr. ROMANO. Absolutely.

[Applause.]

Ms. BASS. Once again, I want to thank our witnesses on our first panel. This was excellent. We really appreciated your testimony.

And as my colleague Representative Butterfield said, you are not just giving testimony and having a discussion here just to educate ourselves. We take this information and this absolutely helps us develop legislation. So, thank you very, very much.

[Applause.]

Ms. BASS. While we are transitioning to the next panel, I wanted to acknowledge a few people that are here. I saw former Assemblywoman Gwen Moore come in. Where is she? Please stand up. For my colleagues here, that is the other Gwen Moore.

[Applause.]

Ms. BASS. There is a member of Congress named Gwen Moore who is from the great state of Wisconsin. She is the original Gwen Moore in our audience here.

Michael Lawson, who is the CEO of the Urban League, is here.

[Applause.]

Ms. BASS. And standing next to him is Pastor Michael Eagle, who has also been a warrior for criminal justice reform for many, many years.

[Applause.]

Ms. BASS. And I want to thank Reverend Boyd. Those folks from Los Angeles know we are in the Fame Renaissance Center. We are across the street from First AME Church. So we want to thank Reverend Boyd.

[Applause.]

Ms. BASS. I see our MTA Commissioner, Jackie Dupont-Walker, is here.

[Applause.]

Ms. BASS. Now let me welcome our second panel. Our first panel talked about reforms that California has done, and our second panel is going to look at what happens when people are released from prison, what do they need, what is their journey, and what can we do legislatively to help.

I want to mention that on Tuesday the Crime Subcommittee in Washington, D.C. is going to have a hearing that is specifically looking at women in the criminal justice system, because as we embark on criminal justice reform in our nation, I have been struck by the fact that the discussions really are talking about men, and women and children are often not part of the discussion. So I want you to know that that is not the case in Washington, D.C., but we are definitely going to look at that.

And then also the fact that we are here today having this hearing I think is an example of the types of things that we can do now that things have changed somewhat in Washington. We clearly need to have further changes over the next year, but the changes that have already taken place result in being able to have hearings and putting issues like criminal justice reform seriously on the top of our agenda.

So, our first panelist, Susan Burton.

[Applause.]

Ms. BASS. She is not well known in Los Angeles. [Laughter.]

She is the Founder of A New Way of Life Reentry Project. The Project promotes healing, power, and opportunity for formerly incarcerated people by taking a multifaceted approach to mitigating the effects of and ultimately eliminating mass incarceration. The project provides housing and legal assistance and other comprehensive services for those coming home after incarceration. People might remember that Susan Burton was one of the first recipients of the CNN Heroes. She was one of the 10 finalists out of the thousands around the country.

[Applause.]

Ms. BASS. Mr. John Harriel, as I know him—I used to call him “Big John.”

[Applause.]

Ms. BASS. Big John is a Diversity Management Superintendent with the Los Angeles Electrical Contracting Company, so he is an electrician, works with individuals who seek a new direction in their lives through the construction trades with 2nd Call, A Second Chance at Loving Life. 2nd Call is a community-based organization designed to save lives by reducing violence and assisting in the personal development of high-risk individuals and those who have suffered convictions and incarceration.

[Applause.]

Ms. BASS. Mr. Stanley Bailey will describe his experience, having been sentenced to life in prison under California’s Three Strikes law for a non-violent offense, and his later release after the passage of Proposition 36. Bailey also gave back after his release and drove across the country with a program that provides rides home to those leaving incarceration.

[Applause.]

Ms. BASS. We welcome our second panel and thank them for participating in today’s hearing. I will remind the witnesses that your written statement will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes, and to help you stay within that time we will continue with our iPad screen, which has your time.

Ms. Burton.

**STATEMENTS OF SUSAN BURTON, A NEW WAY OF LIFE RE-ENTRY PROJECT; JOHN HARRIEL, DIVERSITY MANAGEMENT SUPERINTENDENT, LOS ANGELES ELECTRIC CONTRACTING COMPANY STANLEY BAILEY, DURANGO, CO**

**STATEMENT OF SUSAN BURTON**

Ms. BURTON. Yes. Good morning. Thank you so much, Congresswoman Bass, for putting this panel together. I want to thank you all for spending your Saturday morning with us here in Los Angeles.

[Applause.]

Ms. BURTON. My name is Susan Burton. I am Founder of A New Way of Life Reentry Project. And just to give you some context of how I got here, which is documented in the book that you all have, the short story is I lost a son. After I lost him, I began to drink. I drank alcoholically. It escalated to drug use, and I was sentenced to prison. I was sentenced to prison not one time but six times. Every time, I would plead my case and ask the judge for help. I was always sentenced to prison.

October 4th of 1997, I found a place on the west side of Santa Monica out by the beach that helped me. When I landed there I couldn’t understand why the type of help that was available to people in Santa Monica was not available to people in south L.A.

[Applause.]

Ms. BURTON. After leaving the recovery program, I worked, I saved money, all the time beginning to understand the difference of the two worlds. I saved money and I got a little house.

You go down to Skid Row today, you will see where we get off the bus when we come from California prisons and try to make a way, a way back into our lives. I met Karen Bass at the Community Coalition, one of the only places that embraced what I was doing. I bought a house and I began to meet women down there at that bus station and would bring them to that house.

Today—that was in 1998—we have helped over 1,000 women come back into the community.

[Applause.]

Ms. BURTON. We have a 90 percent success rate. We also help women reunite with their children. We have legal services. We have just an array of services.

I published a book in 2017. 2018 I spent going to prisons all over this country, all over this country and in two other countries. I visited 30 states, 46 prisons, and sat down with women. When we talk about what women need when they are leaving prisons, overwhelmingly I saw women recidivating because they had no safe place to go. I saw women who were desperately trying to maintain their parental rights when needing reunification services and ways to keep ties to their children. I saw women who wanted to get a job and go to work and were worried about how they would get employed, how they would live.

As a result of that tour, as a result of seeing all the languishing and suffering women across this nation, I developed a training to help states to replicate our model at A New Way of Life that has proven to be very successful.

I have also raised \$2 million to help those states and those women to replicate the model of A New Way of Life.

[Applause.]

Ms. BURTON. I know what it could mean to leave a prison and have safety, and to leave a prison and not have safety. Women are the fastest-growing segment of the prison system, and we could really be doing something different.

So I am really, really thankful to you, Congresswoman Bass, for holding this hearing, not a town hall, and having us come together here to begin to discuss women reentry and the needs, to turn the tide here.

Before I close, with my 11 seconds, in order for me to go back home to A New Way of Life, I need to have all the women from A New Way of Life stand, and I would really like to have all the people in the audience—

[Applause.]

Ms. Burton [continuing]. Who are formerly incarcerated, can you just stand and let us know and see who you are and what you look like? All right.

[Applause.]

Ms. BURTON. So, thank you. But I think housing, jobs, reunification support, and just being able to have that level of hope for people coming home. Thanks.

Ms. BASS. Thank you very much.

[Applause.]

Ms. BASS. John Harriel.

**STATEMENT OF JOHN HARRIEL**

Mr. HARRIEL. Thank you. That is a tough act to follow right there. I just want to say thank you for the work that you do, Susan, because I am aware of it, and thank you, Chairman Bass and the committee, for being down here. This is a great day today and I am glad to be here.

So, as you read off my things that I do as being an IBEW union electrician, going into my 22nd year, Diversity Manager, General Superintendent for Morrow Meadows Corporation, and a facilitator at 2nd Call, and also a member of the great Abundant Life Christian Church down on 3500 South Normandy, where we hold the Life Skills class every Thursday.

But before we get to that of me being a homeowner, an individual in the community—I still live in the same community I helped destroy—let's go back to the prison system, because absolutely I come from that dysfunction.

I did not know that I had low self-esteem growing up. When I would suit up—and when I say “suit up,” we are talking about not the suit that I have on today, looking real handsome——

[Laughter.]

Mr. HARRIEL [continuing]. But the other suits that would cause individuals to say, hey, that guy must be a member of so-and-so.

I had no idea that I wanted to commit suicide. I just didn't want to do it by my hands. I wanted somebody else to do it.

So growing up in my community, when I think back there was no men leading the way as far as getting up, putting their boots on, going to work every day. What I saw in young men, were other things that were counter-productive of manhood. But at the time I didn't know.

To show you how counter-productive it was, I can remember a time as a young man, my mother, bless her soul, because she is not here anymore, but I can remember her being on the floor picking up little white spots thinking it was crack cocaine, and my sister was involved with the man who supplied her the cocaine, and I worked for him as a drug dealer. So he was able to take control of the whole household. But by me not understanding manhood, I thought that was just how it was. I had visions of going to prison because in my community prison was rewarded.

Now that I know that it is not like that, when I was in prison, there were two men by the name of Ernest Cornes and Everette L. Tims that helped me see something in myself I didn't see in others, I didn't see in myself. So when I got out of prison, the IBEW saved my life, and Morrow Meadows enhanced it, because they believed in a young man that did the things that I have done, and with these same hands. Everything in L.A. that has been built of significance, I have been on to help build.

[Applause.]

Mr. HARRIEL. So with that, I understood that if it helped me, I had the duty in my community to help those same young men and women who others called gang members. I called them friends. We are in the same group of now picking up tape measures instead of guns, purchasing homes instead of doing home invasions. But it

was all through the fact of we had life skills, and that is what 2nd Call does, the life skills. So we talk about the anger management, the low self-esteem, how did it feel to me not to have my father or even my mother hug me and tell me she loved me, how did that make me feel.

So when I talk about those things and I get that out of me, free of charge, we get to talk about that once a week down there on Thursday, it makes me a better person in my community, and it makes me a better employee, a better friend, a better father, a better grandfather, and an individual who can change and save lives because of the simple fact of what we preach and teach is I want you to be a better person. The careers come later.

There is nothing I cannot build due to the building trades allowing someone like me with a background of a 9th grade education to now there is nothing I cannot build. I am an absolute vicious individual when it comes to being a building electrician.

[Applause.]

Mr. HARRIEL. I know how to do this. And I think the Morrow Meadows Corporation and the family—because with them, from the top down, that family decided to come out and invest in our community, and there are a lot of young men and women working because the IBEW provided a platform, but Morrow Meadows enhanced it by allowing them to come down to see what 2nd Call does and embrace what we are doing for the community and help us be productive citizens in our community.

So with that I will say to you thank you for thinking outside the box and being uncomfortable and coming down to the community and doing something different. Thank you.

[Applause.]

[The statement of Mr. Harriel follows:]

**Testimony of Mr. John E. Harriel Jr. Diversity Manager/General Field Superintendent for Morrow Meadows Corporation/ 2ndCall Facilitator before Congressmember Karen Bass and Members of the House Judiciary Subcommittee on Crime.**

**California Criminal Justice Reform: Potential Lessons for the Nation July 13,2019**

Congresswoman Bass and Members of The House Judiciary Committee on Crime, I would like to express my sincere thank you, and for allowing me to testify today. I'm very humbled by the opportunity.

I wish I could go back and speak to my younger self and reassure that young boy that he would be okay. In fact, explain to him that one day he would be standing before Congresswoman Bass and Members of the House Judiciary Subcommittee on Crime, pleading for change and reform in the California Justice System. There is no doubt in my mind, that young boy would never understand how he could be here today. As a young child I have vivid memories of extreme violence all around me and often times looking at my beautiful mother crying and I had no idea that it was because she was experiencing extreme low self-esteem , she was a single mother raising 2 children with no help from our father. I can remember sharing a pack of candy with my mother after not eating for days due to her addictions, I can still hear my mother's stomach growling in pain even though she's been dead for 10 years. Those growls were like drums shouting over my own rumbling stomach pains. As a young boy I felt helpless because I had no idea what it meant to have low self-esteem, I just wanted love from my mother and protect my sister and best friend Chante Renee Harriel. These incidents and others are what lead me to a life of crime. In my mind it was out of need not desire, so for me instead of staying the course despite being from a dysfunctional family I decided to seek acceptance elsewhere. I joined an organization at a very young age some will call such organizations gangs, for me these were my friends.

What made our bond so special is the fact that most of us had similar background with regards to growing up in such a dysfunctional community. Being a member of The Bloods was like being in a fraternity at USC I had brothers that understood me, and I never had to worry about being hungry again. When I turned 14 my mother put me out the house due to my criminal behavior effectively making me homeless. So, I needed my brothers even more. By not having my father in my life, It was easy for people who had ill will to infiltrate the family, an example of this was the fact that my mother was an addict, my sister was dating the drug dealer who gave the drugs to my mother and I as a young person selling drugs for the same person that was dating my sister and poisoning my mother. I was so dysfunctional that I believed this was part of manhood and I was doing what my father couldn't do for us which was take care of my family. I in the process of believing I was a man was married and fathered a girl at a young age but had to leave them both twice by going to prison. Imagine that the family I wanted to provide a protect I left to the world. When I received my 2<sup>nd</sup> prison term in Illinois I knew I had hit rock bottom, not only was I over 3,000 miles away from home I also had a 9year sentenced which I completed 4 ½ years of and was paroled in 1997 to leave both my wife and daughter . Going to prison was no big deal to me at that time because my community rewarded those who went to prison, you are considered a man after going to prison, ironically me being in prison was the best thing that happened to me because at 26yrs of age while incarcerated I learned what it meant to be a man. I owe a great deal of credit to Everette L. Tims and Ernest Cornes for seeing something in me that I didn't see in myself. I learned about the IBEW while incarcerated because Everette L. Tims was an IBEW Journeyman Electrician from Danville, Illinois and he mentored me in prison to think about becoming a Union Electrician and Ernest Cornes who was a lifer mentored me in learning algebra. Upon release I entered the Maxine Waters Employment Preparation Center in watts on 103<sup>rd</sup> and Central Ave. in South Los Angeles and begin the journey of becoming an IBEW Union Electrician. The power of a man showing me what manhood was and is I knew that when I returned to society I had the tools to produce and help build back the communities I once destroyed.



Not only did the IBEW and Morrow Meadows save my life it also gave me REDEMPTION. I only had one chance to use this platform to become a contributor to society and being a changed man for my family and community and to be honest the requirements to becoming a Union Electrician were stricter than being on parole. Not only did I think I couldn't become an electrician due to my own wall of rejection I believed that being a Union Electrician was for Caucasian men and mobster's go figure. I was so grateful that the IBEW has a place for a high school dropout, ex-con and no prior experience person like myself I knew that if I was fortunate to get in that I would not fail. When I finished the 5-year apprenticeship I finished with a perfect attendance and the class of 2003 valedictorian, I had to spread the word. It was and still to this day the Morrow Meadows Family that hired me as an apprentice back in 1998 and showed and nurtured me to who I am today a professional Electrician, this company from founder Bob Meadows to the children who run the company now Robert Meadows, Cathleen Vick, and Karen Price (RIP) and their team of experts like Rick Jarvis, Zeke Zatorski, and Leo Black who mentored and showed me the trade and treated me like family to whereas I'm one of a few African Americans in the nation that hold the title of Diversity Manager and General Field Superintendent, due to the family believing in me and taking a chance to not only have me working for them but others from the community working for the company also, it's truly be ground breaking what this family and its employees have been able to accomplish in its 54 year existence. I'm forever grateful for the IBEW and Morrow Meadows for giving 2<sup>nd</sup> chances.

Again, I wish I could tell that young man one day he would someday sit on the Executive Board of IBEW Local 11, and sit as a Trustee of the same union that I once thought was only for Caucasian men and mobsters thank you Marvin Kropke for believing in me. More important that he would change policies and provide career opportunities to hundreds of people that look like him and also help hundreds of others that don't look like him from all backgrounds, communities, gangs and genders and people that understand what having a second chance means.

In 1997 when I was released from prison my mother Andrea Rene Harriel decide to go and find a church home for the family and we found Abundant Life Christian Church located at 3500 S. Normandie Ave. headed by Pastor John E. Tunstall the IV. This church and its members embraced me and for the past 22 years it's truly been a blessing because when I became a Union Electrician, I was mentoring young adults and other who had come from similar backgrounds like me. When I met the founders of 2ndCall Kenny Smith and Skipp Townsend in 2008 I knew with my ties to the Unions and their organization dealing with hard core gang intervention that this could be something special.

After mentoring so many young people and adults I understand not only the need for proper transitioning from prison, but the need for forgiveness. Here was a community that I helped destroy through selling drugs and violence now uplifting me and standing with me to fight in the hardest battle of my life. It was their forgiveness that allowed me to forgive myself and change. Forgiveness doesn't deserve to be given out to everyone, but it should not be withheld from those who have worked hard to earn it. I am asking this panel to forgive others that

want to earn it, to get a chance and become productive citizens. The same chance that allowed me to be here today. At 2ndCall I know that with a second chance we can help build them up with our way of life teachings at 2ndCall.

According to a national study, within three years, almost 7 out of 10 people released from prison will be re-arrested, mostly due to violating conditions from their release. Some of these causes are due to their social environment. Often times we place broken people right back into the same society that created the criminal in the first place with no tools to help them be a better person, it's like taking a shower and after getting squeaky clean I put on the same dirty clothes. How does anyone receive a fair chance at starting over with that? The current procedure for inmates released back into society are damaging and ineffective. Not only does it hinder the inmates second chance, it harms the community welcoming them back.

2ndCall is a community-based organization founded in 2006, this organization is designed to save lives, by reducing violence and assisting in the personal development of high-risk individuals, proven offenders, ex-felons, parolees and others whom society disregards. 2ndCall has adopted a strategy to begin the healing process to uncover unresolved vicarious trauma of the participants we work with. Our methods and techniques have been implemented in the California Institute for Women in Corona, CA since 2012. 2ndCall curriculum is based on planning for rupture and repair from the “Dysfunctional Family” issues. We empower and teach from a grassroots approach with our highly trained team of 2ndCall Facilitators. We address such topics as: Low Self Esteem, Functioning in Dysfunction, Parenting & the Cycle of Violence, Domestic Violence & Anger Management, Unresolved and Vicarious Trauma, Effective Communication, Job Readiness and Retention. The way of life teachings coupled with the Life Skills we have been able to serve the re-entry population with great success because the Unions recognize the importance of the Life Skills and a large number of men and women are now picking up tape measures instead of guns, and instead of committing home invasions they are purchasing homes. There is no doubt in my mind that the reason that crime is a historic low is because of the work that 2ndCall is doing and the Unions allowing individuals with checkered backgrounds to join the Union. My hope today is that the members of the House Judiciary Subcommittee on Crime really take a hard look at TRUE expungement and housing for re-entry individuals coming back into society and implement 2ndCall Life Skills inside of all California Prisons because if the healing process can begin before release there is a high probability that the individual will not return to the system that is designed for one to fail.

Since my release in 1997, I have carried out a commitment of change for myself and my community. I now have over 22 years of experience in the electrical industry and I’m proud to say that when I was sleeping on the floor with my daughter going through a divorce and feeling like my life was over it was the men and women of God and the fact that the IBEW and Morrow Meadows allowed me a 2<sup>nd</sup> chance that I and others that are doing this work are able to save many lives, not to mention the fact that the hands that were used to sell drugs are the same hands that has built Hospitals, Sporting Complex’s, Trains Stations, Power Plants, and Water

Facilities etc. and truly believes in the helping of others no matter the race, color or creed lets do the work and we all win.

Knowing my own struggle, I have bridge the gap for people that have a record, to be successful in this trade. I've helped develop a relationship between the Unions, 2<sup>nd</sup> Call and other gang intervention programs like Homeboy Industries.

This has helped aid in the prevention of many young men and women from going back to prison.

I understand most people highlight their accomplishment in the beginning of their testimony. They often do this to demand your respect, and capture your attention. I simply wanted to earn your respect to day. My personal journey is unique, however relevant to today's current issues.

I am asking you to help me transition people that may not have had the same opportunities others might have had growing up. With your help, I know we can keep families together.

I stand before you now as a whole man. I no longer need validation or support to survive in this world. That little boy and that young man causes me to have the compassion for others that don't feel like their voice can be heard. My accomplishments show what hard work and assistance can do. I am honored and humbled to have had your attention today. I look forward to answering any question you may have of me and thank you for this phenomenal life changing opportunity.

Ms. BASS. Mr. Bailey.

**STATEMENT OF STANLEY BAILEY**

Mr. BAILEY. Good morning. It is an honor to be here.

As mentioned in the bio, I did do 36 years in the California Department of Corrections, long before they added the "R" to it, to make it "Rehabilitation."

What is not mentioned is that when you get a significant amount of time, you are sent to a prison of higher security. So the programs that help you earn your way out are not available. Because of the constraints for safety, you are not allowed to roam free in and out of your cells for evening classes, and it makes it hard to participate in classes.

My childhood, to go to that, is pretty typical. I was involved in drugs. Two months before my 19th birthday I entered the prison system. A month before my 54th birthday I was released. I was a recipient of Prop. 36. Twenty years in the prison system, I was convicted of drug paraphernalia, which triggered the Three Strikes life sentence.

During the last 10 years of that sentence, I availed myself of self-help classes, alternatives to violence programs, Criminal and Gang Members Anonymous, Alcoholics Anonymous.

I didn't enter the prison system as a thug. I went in as an addict, and there is a big difference. Addiction and mental health make up a large proportion of the prison system. The mental health people that suffer are abused both by other inmates and staff. Addiction was not addressed. ILTAG was not even a word when I went into the system.

After Prop. 36 passed, I was picked up by Stanford's Ride Home Program by one of the two individuals that weren't attorneys, that were released from prison, convicted felons themselves. The first 24 hours of release was a real crucial time for me, and having some instruction in what I could expect to come my way, both good and bad, given firsthand, not somebody that spoke about it academically but someone that had actually done it was a big help.

If you serve a significant amount of time, housing and employment is the issue. Most young men that go in, and women, and do 18 months, they still have family, they still have girlfriends, boyfriends, people to look out for them when they get out. If you serve 10, 20, 30, 40 years, when you become that age, the generation before you has most likely passed. Myself, my mother, father, grandmother, grandfather, aunts, uncles, brothers, sisters, everybody passed before my release. When I was getting ready to come home, everybody that I knew was a junkie or a thug. So to come out to that was a scary thought.

I was approached by my counsel, who works for Stanford University, and I was told that maybe volunteering for transitional housing—it wasn't court ordered for Prop. 36 recipients. And also for AB 109 for the post-release community supervision was another good thing to volunteer for. It gave you accountability.

Transitional housing is just what it says. If you serve three decades in prison, you need a transition back to society. Most of us know where China is. Most of us know what a boat is. But if you take us down to the dock and you say get in a boat and go to

China, you are kind of at a loss. Even if they hand you charts, you don't know how to navigate that, and that is what we deal with as older people coming out of the Department of Corrections.

Since my release I have worked as a street sweeper on the Figueroa Corridor, from Martin Luther King to Adams. I passed by there today, and it was kind of ironic. Since I am now a heavy equipment operator and a truck driver, when I tell people that I worked for Christmas as a street sweeper, they assume it was machinery. And I tell them no, it is like the guy following the elephant at the zoo. [Laughter.]

I had a little cart, from the business to the curb. That is what I did.

When I would ride the bus to work I would pass a little truck yard, and I always thought I am going to go in there and ask that guy if I can get some experience around those trucks. But he had this dog that used to run out to the front and chase me.

So one day I got up the nerve and I went in there and I told the gentleman, man, I would really like to have some access to the trucks and the heavy equipment just to familiarize myself with it. And he was like, well, don't they have classes for that? And I told him, hey, I need it, I learn by touching, by doing, not by reading about it.

Whatever you need, I will give you 10 free hours of labor, of work a week, and I will even pick up after that little raggedy dog. [Laughter.]

You know, whatever you need, you know? And luckily he didn't chase me off and he allowed that. While I was in the transitional housing I acquired my commercial license, and I am now working as a commercial driver and a heavy equipment operator.

[Applause.]

I just want to emphasize how important transitional housing is. It should be mandatory. It shouldn't be a volunteer thing—

[Applause.]

Mr. BAILEY [continuing]. That after you serve your sentence you can go. It should be two years before your sentence ever ends, would you like to go, and give a chance to transition back into society and get, like John mentioned, some man skills or some woman skills, get some job training.

Transitional housing shouldn't be another prison. It should be a place to transition into society.

Ms. BASS. Thank you.

Mr. BAILEY. My time is up, and I just want to thank you for your work on my behalf. I appreciate it.

[The statement of Mr. Bailey follows:]

WRITTEN TESTIMONY OF Stanley Bailey  
 COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY  
 UNITED STATES HOUSE OF REPRESENTATIVES  
 JULY 13, 2019

Good morning. My name is Stanley Bailey and I am honored to be here to share my story. In 2014, I was released from California State prison after serving a total of 36 years in state prison. I served 17 years of a 25 to life sentence for possession of drug paraphernalia while in prison before I was released under Proposition 36. I had nowhere to go, no family to return to. When I was released, I was picked up by the Ride Home program and Carlos Cervantes. He helped me take my first steps of freedom. I was lucky enough to end up at Amity Foundation, a reentry organization that helped me get back on my feet and become trained as a commercial truck driver.

In April of 2015, I joined the Ride Home program as a driver, helping people released by President Obama under his Executive Clemency Program. As part of that program, I travelled all over the country and helped almost a 100 people come home just like Carlos did for me. Today, I am working full-time as a commercial truck driver in Durango, Colorado where I live with my fiancée Brenda and our dog Cali.

Ms. BASS. Thank you.

[Applause.]

Ms. BASS. So we will now proceed under the 5-minute rule with questions, and I will begin by recognizing myself for 5 minutes.

One, I really appreciate all of your testimony. What I wanted to focus on, I am trying to develop a piece of legislation to come up with reentry services. I know in Los Angeles we just opened a reentry center that I am very excited about visiting. I haven't visited it yet. I know under Supervisor Mark Ridley Thomas—and it is right near here, and I think it opened up maybe just a week or two ago.

So I am interested in developing a program that would be run by formerly incarcerated people. Big John, you know I have been to your meetings at 2nd Call, and I will never forget going there and listening to people tell their stories. But if you could envision a program, a one-stop center for people when they get out of prison—and you all do a piece of that—what should take place in that one-stop center? What is needed?

Mr. Bailey, your testimony, which I know I never thought about until you mentioned it, somebody that has been incarcerated for a long time and their family passes away, I never thought about that. But then again, it is so hard to envision the amount of time that people actually serve. You said your final strike was drug paraphernalia. What did you have that sent you in for life?

Mr. BAILEY. I had a hypodermic syringe in my cell.

Ms. BASS. A hypodermic syringe in your cell led to life imprisonment.

Mr. BAILEY. Yes, it triggered the non-violent—under the old Three Strikes law, that was my third strike, and it triggered a life sentence.

Ms. BASS. Incredible. So what would you do, Big John, what would you do? What do you need in a program?

Mr. HARRIEL. The first thing I would do if I had a one-stop, I would form the relationships with all of the building trades and sit them in a room and come up with a process that might be just a little bit different than what the normal process is, because we know we are dealing with certain circumstances, to help facilitate the process of a young man or woman getting into the trades, because oftentimes people will walk by and say, hey, I don't see no black people, I don't see no women, and it is not because they don't want to get you. It is the fact that I don't know the rules, like I have to have a high school diploma, I have to be drug free, I have to take an exam. And then when I get the work—this is where the life skills come into it—do I show up two hours early, or do I show up two minutes late? Do I walk with a purpose, or do I just go out there and lollygag? That is why it is so important to understand those dynamics.

Ms. BASS. So in a one-stop, would you have GED training?

Mr. HARRIEL. Yes.

Ms. BASS. And speak a little bit more—why the building trades?

Mr. HARRIEL. The building trades because I will have a career. The difference between the building trades and a job is that a job maybe affords me a one bedroom. A career will get me a house to where I can get into—



[Applause.]

Mr. HARRIEL [continuing]. Living in my community and doing what I am supposed to do and provide a way. I have a pension. I have health care. And I can build things, and I can leave a legacy because I am the first generation in my family bloodline to be a part of a union, and I know that the building trades treats individuals who follow and do what they are supposed to do with respectful pay, and they can take care of their families.

Ms. BASS. And the building trades is one of the few areas that actually welcome people who are formerly incarcerated.

Mr. HARRIEL. It doesn't matter. I have individuals who have done 38, 40 years, 25 years, and I am talking about the proven risk. I am not talking about the at-risk. I am not talking about low-level crime. I am talking about absolute top, apex, vicious individuals, the ones who are the proven. Those individuals now are working on projects because of the building trades and coming down with the life skills.

I have blacks, Latinos, whites, Asians who want to change this, and we help them, and they get out there in the field and they are thriving. They are building the stadiums, the hospitals, the Staple Centers. We are doing that work. The individuals who used to use these hands for wrong are now doing it for right.

Ms. BASS. Ms. Burton, what would you put in a one-stop?

Ms. BURTON. Congresswoman Bass, to have a one-stop is just like kind of common sense for us, to be able to go to one place, get your I.D., apply for benefits, get connected to medical services, go to have a GED class, go to have family reunification. We are located in the one-stop, so A New Way of Life is a part of that. We are doing family reunification.

To have child services in that one-stop, and to have an array of services allows people to begin to get their lives on track quicker, faster. I said to one of the residents a couple of weeks ago, I said what are you doing today? And she says, well, I am going to apply for the rehabilitation services. And I said what else? And she said that is all I can do with the transportation.

But having a one-stop allows people to access all the different services in one place at one time that can bring their lives back together so they can move forward.

Ms. BASS. Do you think people who are formerly incarcerated could run a program like that?

Ms. BURTON. Of course.

[Applause.]

Ms. BURTON. Hey, I am doing national and international reentry. A New Way of Life has built a place in Uganda, okay? We are about to do one in Kenya. We have a shop going up in Chicago next month, one in New Orleans later this year.

Can we?

[Applause.]

Ms. BURTON. All we need is opportunity. All we need is opportunity.

Ms. BASS. Thank you.

Representative Johnson.

Mr. JOHNSON of Georgia. Thank you.

I didn't introduce myself. I am Hank Johnson. I represent Georgia's 4th District, which is the eastern suburbs of Atlanta, and I have been in Congress for 13 years. Before I came to Congress I was a criminal defense lawyer for 27 years, and I remember every bit of that 27 years, but thinking about the 36 years that you did, Mr. Bailey, is almost unfathomable to me.

I tell you, it is not often that people out in society who are, quote, "law abiding citizens," it is not often that they would get an opportunity to hear the kind of stories that you three have told us and what you have overcome. What you have accomplished is indeed maybe not the same American Dream that others have fulfilled, but certainly you are living what has to be an American Dream, and I want to congratulate all three of you for your accomplishments.

[Applause.]

Mr. JOHNSON of Georgia. And since everybody is talking about Karen Bass—

[Laughter.]

Let me say that during that first 12 years, I was just a rank and file member of the Congressional Black Caucus, never had the desire to serve as an officer, but now I serve as the Secretary of that organization. And the only reason I did that was so that I could support Karen Bass as President.

[Applause.]

Mr. JOHNSON of Georgia. I will be her Attorney General. [Laughter.]

[Applause.]

Mr. JOHNSON of Georgia. But let me ask this question in all seriousness. What is the typical experience of one who has completed their time? They are walked from their cell to whatever outtake location it is at the prison. What takes place for the typical inmate at that time and thereafter, the first 24 hours or so? Could you all—

Mr. HARRIEL. I can speak on that. I have done it a couple of times. You leave your cell. Usually you give away all your stuff to people that you know and people that are in need. You go to a receiving and release area. You are fingerprinted. Your property is searched on your way out. You are given \$200 at the gate, and then you are escorted to the parking lot.

Excuse me, let me back up. If you don't have clothes to parole in, then about \$30 or \$40 of that \$200 is taken from you to supply you with dress-up clothes. If you are in a rural area that doesn't really want convicted felons released in their backyard, then there is a shuttle service that takes another \$80 from you to get you to a larger metropolitan area to put you on a bus back to home. So now you are down to about \$90 when you hit the streets, and you are told that within 24 hours you need to report to your parole agent or it is a violation of the conditions of your parole.

Without transitional housing, it is a really scary experience and there is very little support. The guards in receiving and release, they say, hey, we will see you in a couple of weeks, you know? And that is usually the way it works, too. Recidivism is ridiculous.

It is hard to navigate it without transitional housing. I keep going back to that. I benefitted from it. I spent 15 months, nine of

it voluntarily, court ordered for six. It was immeasurable to me and to what success I have had.

Mr. JOHNSON of Georgia. Thank you.

Ms. BURTON. So, 10 days before release, they drop you—I can remember a paper being dropped through the wicket, and they call it a time docket 10 days before you are released. The anxiety sets in because you know you are unprepared, and you know you have nowhere to go.

The morning of your release you wrap up all your bedding, your clothing, you take it to the gate. You yell up to the gun tower: “I am being released.” You walk over to R&R. You are stripped out, just like you are stripped in, and you are fingerprinted out.

You are given an envelope when you are ready to walk through the gates after three or four hours of sitting there sweating, full of anxiety. They give you an envelope. They put you in a van. They drive you to the bus station, where you buy a ticket. You ride from whichever prison in California you are being released from, and you get off the bus downtown Skid Row.

When you are down there, just think about how many people are being paroled back there and have to leave through that muck and mire, through the devastation, through the conditions to find their way.

You are hoping and you are praying for something different. You know that something different is in you, but you just don’t know how to access it, and all of these emotions, and your freedom, and your ability to make a decision is all coming back to you.

Six times I did that. Six times I failed. It wasn’t until I accessed support that I was able to get my life back together. So no one should be released to those types of conditions and have to navigate that.

Mr. HARRIEL. What I find so disrespectful, because I had to do it three times—but the thing that I found so disrespectful is the fact that it is almost like taking a shower and getting really clean, and then putting dirty clothes back on, because what happens is they release me and they send me back to my community, but then when I go to the parole officer, they tell me I can’t be associated with gang members.

Well, wait a minute. This is my community, these are my friends. If you don’t want to violate me and send me back to the same community, I have nowhere else to go.

So now, by me being an electrician and doing what I am doing, the very house where it was the epicenter of the nonsense is now about to be a house for transitional housing once it gets completed, once it is remodeled, to give back to the community and help so this doesn’t have to happen to other people.

[Applause.]

Ms. BASS. We need to move on to Representative Lieu.

Mr. LIEU. Thank you. Thank you all for sharing your stories and the great work that you have done.

Ms. Burton, I am curious the last time that you were released, how did you find out about that support? What caused you to make a change in relation to the prior six times? How did you know about that?

Ms. BURTON. So I reached a place that emotionally, spiritually, that I knew if I didn't get help, I would die. It is in the book. Over a cheap beer with a friend, he told me about this place in Santa Monica that he had been. It didn't dawn on me that it wasn't working for him because we were drinking cheap beer. [Laughter.]

But I was desperate. I was desperate to find some type of help, and I made my way there, and that is what turned it all around. My parole agents, law enforcement, no one ever offered anything that would help me. I would say that they never picked me for nothing good. But I finally arrived there, and that turned my life around. There, there were therapy services. I was introduced to AA. I am 21 years sober.

[Applause.]

Ms. BURTON. Dental services, medical services, clothing, food, everything I needed was there for me to begin to heal, because that is what I needed to do was heal.

Mr. LIEU. Thank you.

Mr. Harriel, you said that they sent you back to your community. Could you have gone anywhere, or do they restrict the places you can go after you leave prison?

Mr. HARRIEL. I could have went anywhere, but my money—I only had \$200. Two hundred bucks got me back to the community where I left from. I couldn't go anywhere else because that stuff has to be approved, and if I don't know no one, all I know is my community because that is what birthed me and made me. So I had to go back to the nonsense. It is almost like it is a Catch 22, because in 24 hours I got to go in front of the agent, and they have all these rules, and I am sitting there, like, wow.

So I figured out that, wait a minute, if the trades saved my life, then I can do the same thing in my community. So a lot of young men from my same community are working now because I didn't leave the community. I changed my thought process and actually doing the work, and I became uncomfortable by talking to individuals I normally wouldn't talk to and asked them I can help you if I am willing to change and I am willing to go down and do the necessary work to change. I don't want to leave my community. I just want to enhance it and make it just like a community for everybody else.

[Applause.]

Mr. LIEU. And how did you find out about the trades?

Mr. HARRIEL. While I was in prison, like I said, there were some men in there. One of the gentlemen was an IBEW electrician. I never thought about it. I only thought it was for white men and dudes in the mob. I never thought they would accept someone who looks like me. [Laughter.]

But this individual, while I was in prison, I had about a year-and-a-half to go, and I had to change some ways, and that is where the life skills came in, and I started to understand that, make no mistake about it, I am not sitting there telling you that the police put something—no, I did what I did, and I went to prison for it. And I had to accept that fact, be responsible, and then I had to figure out a way how to change that, and it started while I was in prison. I started getting up and going to work every day in there, because those men helped me, and then when I got out I just took

that same energy, brought it out and helped other people that wanted the help also.

Mr. LIEU. Thank you.

[Applause.]

Mr. LIEU. Mr. Bailey, you mentioned Stanford's Ride Home program. I had not heard of it until you mentioned it, so I just read about it, and it is a pretty startling statistic that they have on their website. It says that in the first week after release, prisoners have a 12 times higher chance of dying in that very first week.

So I am curious, if the Ride Home program wasn't there, what would you have done when you were released?

Mr. BAILEY. Well, I had been prepared through an attorney named Susan Champion that works with Professor Romano. That is who handled my Three Strikes case. The transitional housing was already there. Without the Ride Home, I still would have made it to the transitional house.

But the information that I received from the gentleman that picked me up at the gate named Carlos Cervantes was really vital. He told me what I could expect, good and bad, over the next few weeks, few months. They don't just hand you a bus ticket and put you on a plane. I mean, I spent 16 hours going from Port Arthur, Texas to Evansville, Indiana, driving with someone just released from prison. The bus ticket or the plane ride would be a lot easier, but it doesn't give you time with someone who has actually done it, to give you a little encouragement and to give you the courage to go out there and do it.

I say it in a joking way, but I was a heroin addict for 35 years, and I tell people, hey, it is not impossible. If I can do this, anybody can do it. I went to prison with a 6th grade education, no employable skills, was released without a family member in sight, straight into transitional housing. That is what the Ride Home provides. It provides a few hints and a little bit of direction. The power of a cheerleader in your corner, that can't be overstated, someone to tell you that you can do this, this can be done, you just have to want it.

Mr. LIEU. Thank you.

I yield back.

[Applause.]

Ms. BASS. Thank you.

Representative Butterfield.

Mr. BUTTERFIELD. Thank you very much, Madam Chair.

Let me again thank the three witnesses for their powerful testimonies today. I shall never forget it, and I thank you so very much.

Let me spend my few moments addressing state and Federal funding issues for criminal justice reform and reentry services. That is very important, and I am going to ask you in a moment if you would help me understand the trend in California toward the investment in these services from your State Assembly, because I don't know. But what I do know is the trend at the Federal level, and it is not good.

As a country, we spend \$4.7 trillion every year; \$2.9 trillion of that is what we call entitlement spending, which means that we don't vote on it. It is an entitlement, \$2.9 trillion in Social Security, Medicare and Medicaid, and a few other programs. They are enti-

tlements. What remains is what is referred to as discretionary programs, which is what we do vote on yearly. In fact, we are in the middle of the appropriations process as we speak.

About half of the \$1.9 trillion that we have to vote on and will be voting on in the next few days—we have already voted on some of those budgets. We voted on one yesterday, the Defense budget. But of that \$1.9 trillion, half of that goes to the Pentagon. The other half goes to what we call non-Defense discretionary spending. That is the pot of money that we need to target programs to criminal justice reform and reentry services.

Yes, we passed the First Step Act. I am very proud of the First Step Act. I voted for it, but it is only a first step. We must invest significant resources at the Federal level. Your State Assembly must invest significant resources at the local level so that we can deal with job training and transitional housing and GED services and legal services and health care and nutrition programs, and on and on.

So what we are facing in Washington is a thing called sequestration. Several years ago during the Obama Administration we had a debt limit crisis, and the Republicans put the screws on us. They would not allow us to raise the debt limit. I don't have time to develop that right now, but there had to be a grand compromise, and the grand compromise was what we commonly refer to as sequestration. It put a cap on Federal spending. It put a cap on it on the Defense side and the non-Defense side.

So the Pentagon has felt that they have been strangled by sequestration. We in the community that supports the social services and the safety net feel like we have been strangled because we are not able to lift the cap and continue to invest. So we have had a crisis.

So now the Republicans feel that there needs to be a lifting of the cap for the Defense spending. We would not agree until there was a lifting of the cap for non-Defense spending. So that is the tension that we have going right now. We are going to continue to resolve it. All of us on the Democratic side of the aisle—and I can tell you that the Democratic budget in the House of Representatives is a budget that is not perfect, but it is a budget that all of you would be proud of if you would really take a hard look at it.

The problem is that once we pass our budget, it then has to go to the Senate for consideration, and there are different viewpoints over in the Senate, and there is certainly a different viewpoint down on Pennsylvania Avenue. So we are right in the middle of a real struggle right now to get the budget right.

But tell me, if you will, Ms. Burton, and I know you have been on the front line now for a long time, what is the trend line in California with respect to state investment in reentry services?

Ms. BURTON. Assembly Bill 109 shifted money from the state prison budget into communities, and that is where communities had to come up with a formula for how they would spend that money. So there are resources that come from the state to the counties that agencies can apply for.

Mr. BUTTERFIELD. So there is a sensitivity in your Assembly toward this issue.

Ms. BURTON. Most definitely.

Mr. BUTTERFIELD. Maybe not where you want it to be.

Ms. BURTON. Not enough, yes.

Mr. BUTTERFIELD. But the trend is in the right direction.

Ms. BURTON. Yes.

Mr. BUTTERFIELD. Mr. Harriel, do you agree with that, or disagree?

Mr. HARRIEL. No, I agree.

Mr. BUTTERFIELD. Okay.

Mr. Bailey, where are you on that in terms of state funding for reentry services?

Mr. BAILEY. I really don't know the statistics or the numbers. The need for it is there, and I think the numbers on recidivism will show that people that avail themselves of transitional housing have a better chance of success.

Mr. BUTTERFIELD. You know, we ran into a crisis a few years ago with the debt ceiling. You all remember the words "debt ceiling"? That is how sequestration evolved. Well, we are getting ready to hit the debt ceiling again in the next few weeks, and we are going to use this debt ceiling debate to try to leverage more resources at the Federal level so that programs like this can survive.

Thank you so very much again.

[Applause.]

Ms. BURTON. I would just like to state that money comes from the state. It comes down, and sometimes it comes down through law enforcement. A lot of times it comes down through law enforcement, and then law enforcement wants you to contract with them. But they also want to implement stipulations or requirements within those contracts. That is not good for the people that you are serving.

So me, as A New Way of Life, the Director, I had to terminate some of that because we were not going to treat people the way in which it is not the best for them.

The other thing is that private prisons can't come into our communities and begin to do reentry.

[Applause.]

Ms. BURTON. And that is what we see some of those resources, a lot of those resources going to. So when we say community-based, we are not talking about the private prison industry. We are not talking about all of a sudden law enforcement doing reentry. You can't be on the front end and the back end.

So I just want to make those clarifications about how resources come down, how they are distributed and allocated.

Mr. BUTTERFIELD. Well said. Thank you.

I yield back.

[Applause.]

Ms. BASS. Representative Evans.

Mr. EVANS. Thank you.

You just heard Congressman Butterfield talk to you about the expense side. Steve and I are on the revenue side. So he talks about the expense side; we are on the revenue side. The reason I say that is I am on Ways and Means. So when you talk about housing and transitional housing, one idea I would plant with Congresswoman Bass to think about, the low-income tax credit program is a program that tends to be funded by the Federal Government, and

I don't know how California is structured, but in the case of Pennsylvania there is an agency called the PHA, which is the housing authority, and that gives money to the public authority. Basically where it gets all of its money from is through the tax activity bond, which is capped, which was capped when the Republicans did it on the tax side.

So the discussion Congressman Butterfield described to you is ultimately the issue about revenue. And what the Republicans were able to do is a term called "drain the beast," cut the taxes so there wouldn't be any money on the expense side. Where we are right now, we are having this internal debate, not among us but about revenue and the availability of revenue.

So what I would say to you—and I do agree with you, Mr. Bailey, a great deal, the housing issue is probably the issue. My understanding here in California I heard the Congressman describe, there is some kind of bond issue regarding housing. I think you did something about bond housing. Well, we are facing the same kind of problem, and how do we address that? Homelessness is a huge, huge problem, and we haven't figured out what is the best way to approach that.

VOICE. Because you are not working with us who have lived experience. You are working with the other folks who have a say—

Ms. BASS. You can't do that now.

Go ahead, Mr. Evans.

Mr. EVANS. So the bottom line is what we are trying to figure out is we are trying to figure out ways to make more housing available from where we sit. We are trying to figure out what leverage—how do we put the votes together, because I totally agree with you. You can't talk about if a person doesn't have any place to live, there is no question that is a huge issue. So I share with you that is something that we are trying.

[Applause.]

Mr. EVANS. I want to go back to something that—can I call you Big John?

Mr. HARRIEL. Absolutely.

Mr. EVANS. I want to go back to something you said which I am very much interested in, that I am interested in personally. I have an older brother who was addicted for 25 years. He is no longer. He hasn't been addicted in the last 15 or 20 years.

What I am most interested in is the aspect of when you started this conversation off you talked about interventions. You talked about the life skills. What I am most interested in is trying to understand what interventions sort of work, and is that something that is driven by government, driven by the community, driven by religion, driven by church. What exactly—because the follow-up with Congresswoman Bass when she talks about this entity trying to figure out the intervention aspects, can you talk a little bit about the life skills part?

Mr. HARRIEL. Absolutely.

Mr. EVANS. And is that mandated? Is that done by a volunteer effort? How do people enter that process?

Mr. HARRIEL. For me and for 2nd Cause, it is voluntary. But through the community and through experiences, it is absolutely mandatory that an individual come to understand these life skills



before I put them out there in that savage kingdom, what we call the real world, because if I grew up in a square mile where the only thing I understood was violence, there is no way I am going to get up at 3 o'clock in the morning, work 40 hours a week for 25 years. That doesn't make sense to me, because in my brain I have low self-esteem. So if I have low self-esteem, one of the things that I learned about the women that came out of her program was that hurt people hurt people.

So when I hear someone is addicted, I don't even care about the addiction. I want to know what they are running from. And once we get that and we start that process, then we start the process of cleansing out the body, understanding what is going on. Like right now, I will be 50 in December, and my father is the one that is left. He lives at my property. But right to this day it affects me because he has never told me he is proud of me. But that affects me as a man. I know that I am an absolute beast, but I know as a man that affects me. So as a young man, I couldn't go to some of my fellow gang members and say, hey, I feel a little low self-esteem. [Laughter.]

It doesn't work that way. But now as a man I can say that and have other people sit there. So not only do we get the ones coming out, but before they go—I have children in the class that they can understand and I can talk about how I feel, how I feel about certain things, and we get it out through the experience, because I have slept in those alleys. I ate out of trash cans. I have watched things that I know I can't un-see in my head. But at the same time, I know that the rearview mirror in my car is the smallest mirror because it ain't meant for me to look back. I have to move forward.

[Applause.]

Ms. BASS. Representative Horsford.

Mr. HORSFORD. Thank you, Madam Chair.

First, thank you each for speaking your truth and for sharing with us how you have overcome the challenges that you faced and how you are now giving back to help other people. This is a very valuable panel.

I like to follow the money, as my colleague Mr. Evans said. Again, going back to where I started, the California Department of Corrections, last year's budget was \$12 billion.

Ms. BURTON. Oh, we could do a lot with that. [Laughter.]

Mr. HORSFORD. It is 9 percent of your state budget, which is about \$132 billion. If my math is right, and I know it is on average and the rate has gone up over the years, but between the amount of years each one of you have served and how much the taxpayers spent, this is a \$3 million panel sitting here.

What could we have done with that \$3 million for these three individuals rather than incarcerating them? What could we be doing with the \$12 billion? Not to suggest that all of that would go away, but a lot of it could.

And you spoke about the industrial prison complex. I do want to highlight just a couple of achievements in my home state of Nevada. One of our state legislators passed a bill to end private prisons in the state of Nevada.

[Applause.]

Mr. HORSFORD. They are now banned in our state.

We also passed legislation dealing with the sealing of records so that that process is now more streamlined and that people know how to go through the process.

We passed the restoration of voting rights for ex-felons so that they have the ability to change the circumstances——

[Applause.]

Mr. HORSFORD [continuing]. That may have contributed to them being in the situation they were in.

And finally, we passed a bill to compensate those who were wrongfully convicted and to restore some justice there.

[Applause.]

Mr. HORSFORD. So it is a lot happening at the state level, as it is here in California, and at the Federal level.

But I want to touch on Mr. Big John. Before I ever came to Congress, I ran the state's largest employment and training non-profit in Nevada doing a lot of the work that you talk about, and I want to touch on something that you said because it is very relevant, the diversity or lack thereof in some of the trades.

Now, IBEW is a great example, but there are some trades that don't do well. We have done training programs for individuals with and without prior convictions, and they still don't get in. So what can be done to help improve that? Number one.

Mr. Bailey, you talked about that ethic that was inside of you, that when you walked by that facility with the dog out front, you saw an opportunity where some people may have said I don't want to do that type of work, that is not for me. What was it that put that inside of you, and how can we encourage other people to take advantage of an opportunity even though it may not be the one they first saw? Because you were willing to do something initially that may have been beneath you, but it now led to you having the commercial driver's license that you have, but you had to work towards it.

So I would like to ask the two of you to speak on that, please.

Mr. HARRIEL. So, I go first. When I see individuals in different trades that don't look like me, I think about the individuals who didn't get out of their comfort zone. Well, for me, when I got in as an apprentice, my very first day the guy told me he didn't like people that looked like me. I dug ditches.

But here is the thing: I showed up every single day. If he got there at 4 o'clock, I got there at 3:30. If he got there at 3:30, I got there at 3 o'clock. There was nothing—the only words that came out of my mouth was not a problem.

Mr. HORSFORD. So how do we help other people have that same——

Mr. HARRIEL. That is where mentoring comes in, because I didn't just get in and look at it for myself. I knew I had to go back to the community and help other individuals understand that, hey, once I get in, I have to give back.

Oftentimes, the reason why you don't see it is because there are people who are telling people what is going on out there in the Serengeti, but they are not out there battling in the field. I know what they want out there, and I went through it. I got through it, and now I give back and I bring other backgrounds to get back in,

and that is so important. What are you willing to do to be uncomfortable? I think people that get complacent get lazy, and I think people that are complacent, they just do everybody a disservice. They play victim. No, we ain't doing that.

Mr. HORSFORD. Mr. Bailey.

Mr. BAILEY. The quick answer is I didn't have a choice myself. I knew I had to make it, and I wasn't going back to jail, I wasn't going back to addiction. I had already made up my mind inside to do better with myself, long before Prop. 36 was around, when I had no chance of parole. I just wanted to do better for myself.

The addiction didn't fear me. Incarceration I wasn't afraid of. It was the people that lived under the bridge on 39th Street. When you go from 39th and Grand to USC College, the people that lived under that bridge, because if I wasn't going to be involved in crime and I wasn't going to be involved in drugs, that was my future. So that was my reasoning.

The point that you brought up earlier, I have in-laws that are educators, and it is a great point. You can spend \$10,000 in the public school system to educate a child, or you can spend \$75,000 a year later. My sister-in-law comes out of her own pocket to provide things in her classroom. What a correctional officer makes a year compared to what she makes is crazy. And to subsidize any kind of money for private prisons is ludicrous. Anytime someone has an incentive to fill their house, it doesn't make sense to me.

Mr. HORSFORD. Ms. Burton.

Ms. BURTON. Yes, Congressman Horsford, we haven't talked about the harm women incur prior to incarceration. The study that you have, Congresswoman Bass, is part of what women talk about as far as how they have been harmed prior to incarceration, how they grow up, what is done to them, and where they land as a result of the harm.

So I want to make sure that we bring into the conversation the piece on women and what they need to actually be able to come back into the community, become productive members, reunite with children, be good moms, good parents, good employees.

One of my earliest memories is driving to Camarillo State Hospital in the back seat of my mother's car, picking up my auntie's boyfriend, and trying to disappear into that seat because I knew he would harm me over the weekend, and it went on and on and on and on through my childhood.

The women who come to A New Way of Life, we sit in circles speaking and healing with each other about what has been done to us that lands us using drugs or angry and acting out, or what have you. But I just wanted to bring into this conversation the need for women to have access to therapy services, to supports to help them heal also.

Mr. HORSFORD. Thank you. Thank you.

[Applause.]

Mr. HORSFORD. Madam Chair, I would like to just close by saying your vision for that one-stop community center is a great vision and one that I know we can all work to build not just here in California but across the country, and we can start by taking some of the Federal and state appropriations. We can't just cut those budg-

ets. We have to make sure the money gets shifted to the resources where they can produce the best results. So, thank you.

[Applause.]

Ms. BASS. Representative Johnson.

Mr. JOHNSON of Georgia. We have the upcoming Census coming out. I hope every single one of you will, first of all, be counted, will count everybody in your household, and will encourage those out in the streets who may be reluctant to share some information with the Census to go ahead and be counted, because the \$900 billion in Federal revenues that flow to the streets through the state and local governments, if you only report 50 percent of the people who are living in the area, then you only get 50 percent of the money that you should be getting. You only get 50 percent of the representation in Congress.

What we have voted for in the past has been measures that bestow upon the private, for-profit prison industry that is housing people down on the border, the crisis on the border, children who don't even have toothpaste and toothbrushes to clean up. They are sleeping in an aluminum blanket. I don't know how that keeps you warm. They are sleeping on the floor, while the providers of the jail ownership, the detention facility, is getting \$775 per night, per child. That is obscene.

So we need to be voting also. Everybody in here needs to be registered to vote and exercising their right to vote.

Thank you.

[Applause.]

Ms. BASS. Thank you.

Well, let me wrap us up here. Let me begin by really thanking everybody that turned out today. This is an amazing outpouring.

[Applause.]

Ms. BASS. It shows how important this issue is. Since so many people have my phone number, I get text messages from people in this room. I just wanted to mention that the anti-recidivism coalition is a one-stop for reentry, and that 64 percent of the staff at the anti-recidivism coalition are formerly incarcerated, and they provide comprehensive case management and pathways to careers, housing, and policy advocacy.

I mention that because there are already a lot of examples of work that is taking place every day. There is Big John. There is A New Way of Life. But I know there are many people in this room who have been involved in this fight to end mass incarceration for decades. Many of us have been working on this issue for a very long time. We saw the laws when they were being passed. We tried to fight them. We lost. But now we are in a time period in our history where we are taking a look at this.

I will tell you that everybody on the panel today are Democrats, but you should know that this is a bipartisan issue. A couple of my Republican colleagues who wanted to come just were not able to come scheduling-wise, but you should know that we do work together on this issue. The difference is that since there was a change in Congress, we are now here. This is top on our agenda in the Congressional Black Caucus and the Democratic Caucus, on the subcommittee, and on Judiciary Committee. Reforming our

criminal justice system, ending and reversing mass incarceration are keys to our platform.

I want to thank the staff from the congressional office who worked very hard in putting this together, and I want to thank the staff from the Judiciary Committee. You should raise your hand because you flew here from Washington, D.C.

You too, Joe.

Janice from Washington, D.C.

[Applause.]

Ms. BASS. They flew here to put this on.

And then I want to thank my colleagues that are here. Those of you that know me, when you see me come home on the weekends, you always tell me how sorry you are that I have to go back to D.C., and I always tell you that there is no place else I would rather be than at the center of the fight, the existential fight that we are doing in our country right now.

But one of the big reasons too is that I get to serve with people like the people who are on this panel, and several of them—I mean, Ted and I are from Los Angeles. We are used to four days in D.C., three days in L.A. We live on United Airlines and a couple of other carriers we spend 10 hours a week on.

But my other colleagues that are here had a choice to make. They could have gone home. We all have to be back to work on Monday. They could have gone home, but instead they flew to Los Angeles and now will go home for maybe one day, a few hours, and then head right back to D.C. But these are the type of people that I get to work with every day, which is why I can survive being in D.C. right now.

[Applause.]

Ms. BASS. So, as Susan mentioned the need to address women, I mentioned at the beginning that on Tuesday in Washington, D.C. we will have a full hearing that looks at why women are involved in the criminal justice system to begin with, what happens to them when they are there, what do they need when they leave. I am doing specific legislation on pregnancy while incarcerated.

So we have an awful lot of work to do. But one of the things that we have to figure out is the fact that this has become an industry, and so many people profit off of this in so many ways. The whole reentry idea that now the corporations are looking at, how they take over reentry, because we have so many barriers to people who are formerly incarcerated, that is why I believe we need programs that are led by people who were formerly incarcerated, because it serves as a source of support, but also as a source of employment.

The young woman that mentioned working with people with lived experience, a basic principle that I have and many of my colleagues have is that the best way to do legislation is not to go off in some ivory tower but to talk to people who have experienced it and to have them participate with you while you are developing the legislation.

[Applause.]

Ms. BASS. My colleague, Representative Johnson, mentioned the Census, and the Census is an issue that I know our colleagues are going to address in the state legislature, because one other thing that mass incarceration has done to us is where are you counted

when you are incarcerated? You are counted where you are incarcerated, but you know that 30 percent of the state's prisoners come back to Los Angeles County, which cheats us of resources if they are counted in areas they do not live in.

So we have a big agenda ahead of us. I have confidence that we will be able to continue to pass legislation on criminal justice reform. We have one of these little openings where there is interest in the Senate, and there is interest in the Administration.

So we are going to get it done, and I just want to thank you so much for devoting your Saturday morning to address such a critical issue in our country.

Thank you, and we are adjourned.

[Applause.]

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

## **APPENDIX**

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July 19, 2019

The Hon. Karen Bass  
 Chair, Subcommittee on Crime, Terrorism, and Homeland Security  
 Judiciary Committee  
 House of Representatives  
 Washington, D.C. 20515

The Hon. John Ratcliffe  
 Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security  
 Judiciary Committee  
 House of Representatives  
 Washington, D.C. 20515

Dear Chair Karen Bass, Ranking Member Ratcliffe:

As members of the Women Organizing Reentry Communities of Color - Proposition 47 network (WORCC-Prop 47) in follow-up to the July 13, 2019 Congressional Hearing in Los Angeles: *California Criminal Justice Reform, Potential Lessons for the Nation*, we respectfully offer the following lessons and observations from California's implementation of The Safe Neighborhoods and Schools Act (Prop 47), and its impact on re-entry efforts of formerly incarcerated women of color.

In November 2014, California voters passed the referendum known as Proposition 47, changing six low-level offenses from felonies to misdemeanors. Prop 47 saves the state millions of dollars in reduced incarceration. To-date, those savings amount to approximately \$199 million ([bscc.ca.gov/news/board-awards-96m-in-prop-47-grants](http://bscc.ca.gov/news/board-awards-96m-in-prop-47-grants)). Savings from the reclassifications are allocated to local prevention and treatment programs intended to support re-entry communities. The Board of State and Community Corrections (BSCC) is responsible for administering Prop 47 funds through a competitive grant program and is represented by many justice reform champions and allies. Proposition 47 requires that these funds be awarded to public agencies to provide mental health services, substance use disorder treatment and/or diversion programs for those in the criminal justice. The BSCC further requires that at least 50 percent of the award made to grantees is passed through to community-based service providers.



However, despite the historic nature and momentum generated by Prop 47, the promise of this important policy falls short for women of color struggling to reunite their families after incarceration.

Many of us are acutely aware of the trauma and stigma imposed and assigned to re-entry women when seeking employment, housing, child care and other basic needs. As primary custodians of our families, we require multiple pathways to generate income and achieve financial stability that takes into account the unique conditions of women inside and outside of incarceration. WORCC-Prop 47 promotes the inclusion of gender as a key factor in developing and implementing policy. Our stake in the ground is to achieve solutions that respond to women, particularly women of color and their unique re-entry challenges.

As the Subcommittee defines its policy platform, we invite you to consider the following insights from our ongoing work to ensure that existing policies such as Prop 47 benefits re-entry women of color:

- **Include gender at the onset of policy development.** We recommend that policy makers at all-levels enhance their knowledge and understanding of gender responsive practices by seeking input and perspectives of women with lived experiences. Policies developed in the absence of affected communities have limited shelf-life and utility.
- **Target resources for women of color to access employment and other streams of income.** Women often serve as the hub of their families and community inside and outside of incarceration. Creating access to financial stability and health is a key factor to build resilience, prevent recidivism, and prevent youth from the prison pipeline. Policy solutions that can directly impact the 60% of women in jail who did not have full-time employment prior to their arrest (*Vera-web/downloads/publication/Overlooked Women and Jails report web*) and 44% of women who neither graduated from high school nor received a GED (*Sentencingproject.org/wp-content/uploads/2016/1/Women in the Criminal Justice System Briefing Sheets*) will positively influence many other lives.
- **Build data systems and collection into policies to promote transparency and accountability and inform decision-making and use of resources.** Savings from the passing of Prop 47 represent real resources to prevent crime, and re-engage formerly incarcerated populations as contributors to our society. Our inquiries find that state and local criminal justice agencies including courts do not have a systematic consistent method for collecting or accessing data to show who by race and gender are receiving Prop 47 resentencing and reclassification. This data gap means policy makers don't have the appropriate tools to make informed decisions to ensure equitable use of available resources. We want women, particularly women of color, to be counted so they are not rendered invisible.

Thank you for the opportunity to submit this letter. We seek to be a resource to members of the Subcommittee on Crime, Terrorism, and Homeland Security to ensure that formerly incarcerated women of color are counted, are successful in reuniting with their families, and are treated as active contributors to the health and well-being of communities. We hope that our findings about the gaps and opportunities and continued efforts to improve the implementation of Prop 47 in California will help to inform your thinking about the importance of gender in justice reform efforts nationally.

Sincerely,

WORCC-Prop 47 Collaborative Members

- A New Way of Life
- Time for Change Foundation
- Justice Now

Submitted on Behalf of WORCC-Prop 47 Collaborative by:

Connie Chan Robison, Director and Project Manager  
Sylvia Castillo, Consultant and Facilitator  
Center for Collaborative Planning in Partnership with The Praxis Project

Testimony of Michele Alpuente Hanisee  
President  
Association of Deputy District Attorneys  
For Los Angeles, California

Before the U.S. House Committee on the Judiciary  
Subcommittee on Crime, Terrorism and Homeland Security

Hearing on California Criminal Justice Reform: Potential Lessons for the Nation in California

July 13, 2019.

### Introduction

Reducing the prison population is a laudable goal if it can be done without endangering public safety. But the initial focus should be on how it can be done without compromising public safety rather than planning the release of inmates first and trying to figure out how to successfully rehabilitate them after the fact.

California's recent criminal justice reforms, such as Assembly Bill 109, Proposition 47, Proposition 57 have accomplished their primary goal of reducing the state prison population. But there have also been unintended consequences and negative impacts that could have been avoided had the drafters collaborated more with stakeholders and local government entities.

### Assembly Bill 109

Assembly Bill 109 reduced the state prison population by transferring responsibility for housing those convicted of low-level felony prison sentences to the counties. It is important to note that it didn't significantly reduce overall incarceration – it merely shifted the housing location. It also made the counties responsible for the post-release supervision of such inmates. One unintended result of AB 109 was that it resulted in housing some individuals serving lengthy, sometimes decades-long-sentences, in a local facility that was never intended for long term housing. Local county jails typically do not have recreation yards, nor do they offer any rehabilitation or educational programs. AB 109 also placed individuals with violent criminal histories on low-level supervision by local agencies who had never previously been tasked with supervising such individuals. This occurred because the transfer in supervision was based solely on the present incarceration offense rather than the total criminal history of the individual. County agencies like the Los Angeles County Probation Department were ill-equipped to supervise offenders with violent criminal histories. The Los Angeles County Probation Department's website has a "Most Wanted" page that regularly lists dozens of AB 109 offenders with violent criminal histories who have absconded from supervision and disappeared into our communities.

AB 109 also reduced the consequences for a violation of the terms of release. It changed the consequences of violation of conditional release from a return to state prison for 6 months to a year, to what is called "flash-incarceration" – a maximum 10 day hold in local jail. Offenders released on "Post Release Community Supervision (PCRS) had little to fear by violating the terms of their release. Following the enactment of AB 109 there were at least two high-profile murders perpetrated in California by offenders who had been given flash incarceration several times during the term of their release. Although it would be unfair to say that AB 109 caused those murders, it is undeniable that these individuals would not have been able to commit those murders had they been returned to prison under the old system rather than given flash incarceration.

### Proposition 47

The proponents of Proposition 47 promised it would "improve public safety," "reduce prison spending and government waste" while diverting the savings into education, drug treatment and compensation for crime victims. While it did reduce the prison population, it did not deliver on its other promises. Prop 47 was immediately followed by a rising crime rate and a reduction in public safety.

Proposition 47 reduced most offenses for the use or possession of controlled substances to misdemeanors. It also raised the threshold amount for felony larceny offenses from \$450 to \$950. On the heels of the enactment of Proposition 47, larceny and motor vehicle thefts immediately went up.

More importantly, Prop 47 eliminated increased penalties for repeat larceny offenders and eliminated the option to charge shoplifting as a burglary. Those apparently minor changes had a significant unintended impact. In California, police powers of arrest are different for felonies and misdemeanors. For felony offenses, a police officer can make an arrest based upon the report of a complaining witness. But for most misdemeanors, the officer has to personally observe the offense in order to make an arrest, or the reporting party must make a citizens' arrest. In the case of shoplifting or auto break-ins, the reduction of these offenses to a misdemeanor even for those offenders with multiple prior convictions, created a situation that forced private citizens and store security officers to either attempt to detain a thief – at risk to their own safety – or to let them walk away. Citizens and business employees soon learned the difficult lesson that the police, when called, could do nothing. One store security officer was stabbed to death attempted to stop a theft of beer. Anecdotal evidence and information from retailer's associations strongly indicates that a decrease in theft reports in the second and third year after Prop 47 were not indicative of a drop in offenses, but of a drop in reporting. Even with the subsequent drop in reporting, larceny offenses rates remain higher than they were before the enactment of Prop 47.

A study published by the University of Irvine undertook to analyze whether those critics who claimed that Prop 47 caused an increase in crime were right or wrong. Rather than asking if critics were right or wrong about the causal effect of Prop 47, the authors would have done better to analyze instead whether Prop 47 was successful in its stated goals. In the end, the findings that were *not* relevant to the hypothesis were more illuminating than the final conclusion. The study began by concluding that Prop 47 had no effect on violent crime. Such a finding was hardly a surprise as Prop 47 did not change any laws relating to violent crime. The study acknowledges that after the enactment of Prop 47, correction spending remained high and the predicted savings never manifested. It also confirmed that California's already high recidivism rates remained high. The initial finding with respect to larceny and auto thefts was that Prop 47 caused an increase in these offenses. Only after changing the data sets upon which all their initial conclusions were based, were the authors able to eliminate this causal finding, and finally support their initial premise that critics of the initiative were wrong. Read as a whole, the study establishes that post- Prop 47, crime went up, no significant savings were realized, and recidivism rates remained high.

Finally, Prop 47 had the unintended consequence of eliminating DNA collection for those offenses reduced from a felony to a misdemeanor. A California Department of Justice Study conducted in 2010, showed that collection of DNA – particularly DNA collected on non-violent offenses – helped solve cold cases. Seventy-eight percent of DNA matches to unsolved violent crimes were based on DNA collected from adult offenders arrested for low level crime such as drug or property crimes. The elimination of DNA collection reduced the ability of the state to solve violent crimes and exonerate those wrongly accused.

#### Proposition 57

Proposition 57 was the third justice reform law whose primary goal was a reduction in the state prison population. Prop 57 was described to the voters as a change in law that would permit early release only

“non-violent” offenders. Unfortunately, the language of the initiative failed to define who qualified as “non-violent.” By failing to define its own terms (which is the standard practice when drafting a new law) the measure left the door open to numerous classes of offenders whose crimes were violent by any common definition, but not “violent” under existing law. Under normal statutory construction, in the absence of a definition the normal remedy is to turn to existing definitions. The Penal Code did not contain a “non-violent” crime list, but it did contain a “violent” crime list in Section 667.5. That list, however, was never intended to be an exhaustive list of all violent offenses. It was a list of those crimes designated for alternative sentences and reduced credit-earning under the “three-strikes” law. In addition, the language of Prop 57 was so broadly written, critics warned that it would make not only violent offenders eligible for early release but also register sex offenders and inmates serving “three-strikes” sentences. Governor Jerry Brown, who was the proponent of the initiative, denied that registered sex offenders and third-strikers with violent criminal histories would be released. The governor insisted that the regulations written to implement the initiative would exclude such offenders from eligibility. This was an obviously false promise as a regulation cannot be written to expand the scope of a law that it purports to implement. Regulations were written to exclude registered sex offenders and third-strikers with violent criminal histories. Those regulations were promptly challenged in court and found to be invalid. The courts ruled that registered sex offenders and third strikers must be considered for early release under Prop 57.

In the wake of its reduction in the prison population, California’s efforts at effective and meaningful rehabilitation have been less than successful. A recent audit of The California Department of Corrections and Rehabilitation (CDCR) showed that those who participated in rehabilitation programs had the same rate of recidivism and those who participated in no programs. In other words – the programs were as effective as no program at all. According to the state audit, California spent \$298 million on rehabilitation programs that don’t work. The audit recommended that the CDCR:

- Use evidence-based programs;
- Measure the cost-effectiveness of the programs;
- Target programs to the highest risk and highest need inmates;
- Employ performance measures.

The Los Angeles County Probation Department, the largest probation department in the state and the nation, has comparable success. The department has a 45% recidivism rate for AB 109 supervisees. That rate is better than the CDCR, but still little better than fifty-fifty. The department does not even track recidivism rates for normal probationers serving non-AB 109 sentences.

### Conclusion

It is possible to divert at risk youth from the justice system and it is possible to successfully rehabilitate adult offenders. One program that has been successful is a private program operating on outside funding and some funding from the CDCR. The Anti-Recidivism Coalition (ARC) in Los Angeles experiences a mere 11% recidivism rate despite including the most violent offenders in its program. They employ a peer-to-peer model using “credible messenger mentoring.” Rehabilitation, they believe, should start from an individual’s first day in prison.

If there are lessons to be learned from California, it is that successful rehabilitation must be achieved before sweeping reductions in incarceration are attempted. If the government chooses rehabilitation

over incarceration it needs to choose and fund rehabilitation that works, rather than merely pay lip service to the idea. To quote one of the other speakers, Mrs. Kubrin, who co-authored the UCI study, "Solutions to America's 'crime problem' should not be limited to 'back-end' efforts at reform, or efforts that focus solely on sentencing and incarceration. 'Front-end' solutions—primarily those aimed at crime prevention—also deserve a seat at the table."

Successful and effective rehabilitation may require as much or *more* resources than the initial cost of incarceration. But long-term savings can still be achieved through the elimination of future incarceration of those individuals and the benefit of changing them into productive members of society. These changes cannot be made unilaterally. Success requires a front-end commitment to rehabilitation that works. Achieving that requires collaboration with all stakeholders to reduce unintended consequences. Anything less is a gamble with public safety.

